



ACME TOWNSHIP PLANNING COMMISSION MEETING
Acme Township Hall
6042 Acme Road, Williamsburg, Michigan
6:00 p.m. Monday, October 29, 2012

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

Members present: V. Tegel (Chair), B. Carstens (Vice Chair), S. Feringa, T. Forgette, R. Hardin, M. Timmins, K. Wentzloff, D. White, J. Zollinger

Members excused: None

Staff Present: S. Vreeland, Township Manager/Recording Secretary
N. Lennox, Zoning Administrator
J. Jocks, Township Legal Counsel
J. Iacoangeli, Planning Consultant

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

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

1. Continuing Education/Special Presentations: None
2. Consent Calendar: Motion by Timmins, support by Zollinger to approve the Consent Calendar as amended to remove the Planning, Zoning & Administrative Activity Report and Planning Commission minutes for discussion, including:
 - a) Receive and File:
 1. Draft Unapproved Minutes of:
 - a. Board [10/02/12](#)
 - b. [Planning, Zoning & Administrative Activity Report](#)
 - b) Approval:
 - a. ~~Planning Commission~~ [09/24/12](#)

Motion carried unanimously.

3. Limited Public Comment: None
4. Correspondence: None
5. Public Hearings: None
6. New Business: None
7. Old Business:

a) **Deep Injection Wells:** Over the course of several months, the Commission has been discussing the potential desirability of regulating deep injection wells and the limits imposed by state law on the township's ability to do so. The only type of well the township appears able to regulate are industrial waste disposal wells. Jocks has prepared a draft Zoning Ordinance amendment for consideration. The draft highlights the need to select one or more zoning districts in which such wells would be permitted. The section would be inserted into Article IX of the ordinance, which

provides specialized requirements for special land uses.

Discussion commenced regarding appropriate allowable zoning districts. At prior meetings the relative wisdom of allowing them in the agricultural district was discussed. Carstens observed that in the agricultural district landowners are more likely to be using private wells for drinking water. While injection wells theoretically are significantly deeper than the drinking well aquifers and they should remain totally separate, he expressed the concern that accidents have occurred that have contaminated drinking water wells.

Carstens asked if well operators can ensure that anything they pump down into the earth would remain within the boundaries of the property where the well is located, or might it migrate across property boundary lines. Jocks' response began with information about real property law and the concept that property lines extend to the center of the earth and infinitely into the sky. There is some case law in western states about this issue that generally opines that far enough down into the earth property rights are lost. There is no way to prevent the injected materials from travelling through the ground, and no way to know where they will go.

Carstens felt that many of the proposed ordinance provisions are excellent, but is concerned about whether and how the township might guarantee that injured adjacent property owners would be made whole in the event of contamination. Jocks replied that it cannot; the situation would be governed by state law regarding environmental contamination cleanup and the affected neighbor(s) would have to sue.

Tegel asked whether there are existing wells in Acme Township that might potentially be converted from non-hazardous to hazardous. She recalled that a few years ago there was an application for conversion of a well in this way in Whitewater Township. At the same time there was an application for a new non-hazardous well just north of Brackett Road just east of US 31. Currently there are no known deep injection wells in Acme.

Tegel also said it seems to her that if someone does something that creates value across property lines, people have successfully claimed a share of that off-site value. It seems to her that the principle isn't applied similarly when something creating damage across property lines occurs and the off-site affected party is looking for assistance from the creator of the situation. Jocks proposed a situation where a well is 500' from someone's property and a casing fails creating groundwater contamination. The nearby neighbors could file a claim to force a cleanup. Deep injection forces materials thousands of feet below the surface. If someone came to him with concerns that a nearby well had contaminated their property, the first thing he would advise them to do is to conduct studies at their own cost to prove this to be the case. It would be the only way to know for certain. Limited case law demonstrates that it is difficult to prove deep contamination trails, whereas if contamination comes to the surface testing can be done to see if the contamination matches contents of certain injected materials. No "marker" requirements are in place for specific tracer elements to know precisely.

Timmins noted that the proposed ordinance requires the installation of 5 test wells, and asked about how close they should be to the injection well. By watching these wells, perhaps neighbors can be advised well in advance if a plume of contamination appears to be headed their way, and how long it may take to reach them. Jocks recommended that the placement of the test wells be scientific, rather than being in relation to a particular adjacent property line.

Hardin observed that this is not a case of picking a good place for this land use because there is none, but rather for picking the least bad place.

Iacoangeli noted that 1990 USGS county mapping was done that indicates that most local groundwater is from glacial deposits averaging 100 – 900’ deep. There is a shale shelf, and anything deeper doesn’t transmit ground water. Acme Township was mapped, and farms were identified that actively irrigate. Rather than identifying zoning districts, it would make more sense to identify suitable areas based on geology. He suggested looking at maps of current groundwater recharge areas, updated maps of glacial fill areas, and data from farmers regarding their groundwater usage. Irrigation uses substantial amounts of water, and one would not want deep injection wells impacting water for crops. White added that much of the water farmers use is for cooling cherries. Using these data sets, a reasonable assessment of where the wells should not be placed could be made. Likely it would be undesirable to place such wells anywhere in the agricultural district. Iacoangeli offered that the decision should be largely based on sub-surface geology.

White noted that all farmers have been required to map all their wells and their flow rates, and to update the mapping annually. They provide the information to the Michigan Department of Agriculture. The groundwater recharge area and geological data maps are available through the DEQ.

Tegel expressed concern for maintaining surface water quality along with drinking water well quality, and asked if obtaining bathymetry for East Grand Traverse Bay would be important. Carstens also expressed concern for the impact on wildlife as well as on humans.

Rather than just designating zoning districts, creating an overlay based on the geological and surface land use considerations seems prudent. More information is required before this determination can proceed. Jocks noted that the ordinance is not designed to welcome this land use to the township. Currently the township has placed no controls on deep injection wells and would have a difficult time opposing one. This ordinance would provide information about where we believe deep injection wells are more appropriate and conditions under which we would permit them. Hardin added that contamination issues can’t be prevented by pro-active measures; they can only be remediated.

Motion by Zollinger, support by Wentzloff to table discussion regarding a deep injection well ordinance until such time as the studies and data discussed are available for evaluation. Motion carried unanimously.

- b) **Master Plan:** Iacoangeli distributed a [stakeholder engagement analysis worksheet](#) for everyone to fill out and return. It is designed to help people categorize individual, community group, and agency stakeholders effectively as to their appropriate role relative to the master planning process. This information will help the Commission decide how best to engage each one. If individuals have trouble categorizing entities they feel are stakeholders, they can start by simply listing them on the back.

Beckett & Raeder is subcontracting with the NMC Research Services to prepare and administer a community-wide survey. Every township resident will receive a paper survey with a return envelope. Invitations to public meetings will be by postcard mailing. The intent is to distribute the survey at the beginning of January, and that it will inform both the Master Plan and 5-Year Parks & Recreation Plan updates.

The Planning Commission needs to consider the types of questions to be included in the questionnaire. Iacoangeli suggested that there be several groups: basic land use and zoning; parks & recreation; and township-related issues (i.e. desirable public facilities, opinions about whether certain programs are desirable and whether or not they are willing to pay to support them). The Whitewater Township Master Plan community survey from several years ago was distributed for reference. Zollinger suggested looking at the questions that were distributed to the public regarding the proposed Bates Sub-Area Plan. Some of the questions might be “good” and some “bad,” but in any event it would provide food for thought. Results will be cross-tabulated for several factors, including age ranges, geographic locations, etc. Dr. Cathlyn Sommerfield from the college will meet with the Commission to review the questions, which will be screened and managed to eliminate biases. There is a limited budget and a limited number of questions we can put into the survey, so it needs to be carefully and efficiently composed.

Carstens reminded the group that the County is currently updating its Master Plan. For the first time they visited each township in the county and interviewed the Planning Commissions. They also interviewed the Planning Commissions in surrounding counties to get their input up-front, rather than waiting to get their feedback after the plan is developed.

The plan is to mail one survey per household, and one per unique property owner. Zollinger noted that individuals within a household may have widely differing views. Iacoangeli will look into a method to have additional surveys sent to a household upon request.

The Commission reviewed the [Whitewater Township’s survey](#), and discussed in detail which questions they would like to use and which not, and for the retained questions how they should be customized to Acme’s needs. Iacoangeli will also ask Kurt Schindler from MSU Extension for survey question ideas.

- c) [Waterfront Mixed Use Development Standards](#): The Commission was provided with some initial concepts for new waterfront district zoning prepared by Iacoangeli and Lennox to gather some preliminary feedback on how to proceed. Key concepts include allowing a variety of land uses which require SUP approval currently, including retail, by right. The concepts are largely form-based, and encourage the development of multi-story buildings with retail and restaurant uses on the first floor, office uses on the second floor, and residential and lodging facilities on upper floors. Most uses could be up to 3-stories tall, while lodging facilities could be up to 4-stories tall. There are provisions for parking space requirement reductions based on space sharing by a mixture of land uses that have their heavy traffic periods at different times of day. All of the provisions have flexibility in mind.

Iacoangeli and Lennox will continue to work on the draft and report back. Once it is in an advanced form, but before the formal public hearing, they would like to distribute the draft to and discuss it with the US 31 business and landowners. Zollinger suggested that it is important to present information that compares and contrasts regulations as they are and as they are proposed. Many landowners believe they are more familiar with existing regulations than they may actually be.

8. Items Removed from Consent Calendar:

- a) [Planning, Zoning & Administrative Activity Report](#): Tegel noted a typo in the size of the Goodwill retail store, which should read 12,000 sq. ft. instead of “12,00.”

- b) **Planning Commission Minutes [09/24/12](#):** On page 2, a motion made by Zollinger does not indicate who supported the motion. It does state that the motion died for lack of support, but at the beginning of the motion the words “support by” should therefore be removed.

Motion by Wentzloff, support by Timmins to receive and file the Planning, Zoning & Administrative Activity Report and to approve the minutes of the September 24, 2012 Planning Commission as amended. Motion carried unanimously.

9. Reports:

- a) **Placemaking: To the public interested in the Placemaking process, please be sure to visit www.acmeshores.org or follow us on Twitter: @AcmeShores.** The final report will be presented to the Board of Trustees at their November 13 meeting.
- b) **Tegel MAP Conference Report:** received and filed. Tegel found the conference extremely informative, and noted that public education and information were stressed. All session handouts are available on the Michigan Association of Planning (MAP) website.

10. Planning Commission Items for Discussion (*items must be submitted one week prior to the scheduled PC meeting. Discussion limited to 5 minutes for each item listed.*)

a)

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

Over the past week, there has been e-mail about changing the date of the November Planning Commission meeting, as it appears we will be unable to generate a quorum on the regularly scheduled date.

Motion by Wentzloff, support by Timmins to reschedule the November Planning Commission meeting from November 26 to November 19 at 6:00 p.m. Motion carried unanimously.

Tegel asked Jocks a question about *ex parte* communications. A number of people considering moving their businesses to Acme have approached her with questions. She wants to encourage them, but does not want to stray into inappropriate deliberation outside of public meetings. Jocks said that while this is a complex subject, in general promoting the township or discussing specifics of the ordinance or township history or point of view is appropriate. Discussing the details of a pending or future application with a current or future applicant would be problematic. A relationship with an applicant can be perceived as a bias. If someone challenges a township decision, whether or not they have a winning case it can create difficulties for the township. Potential applicants can be encouraged to discuss application specifics with the paid township staff and administration.

Tegel spent 6 hours working with representatives from Beckett & Raeder on a tour/inventory of township parks preparatory to the parks plan update. Buildings and Grounds Manager Tom Henkel also attended.

Meeting adjourned at 9:45 p.m.