



## APPROVED

ACME TOWNSHIP **SPECIAL BOARD MEETING**  
ACME TOWNSHIP HALL  
6042 Acme Rd, Williamsburg, Michigan 49690  
Monday, December 9, 2019, **7:00 pm**

**CALL TO ORDER WITH PLEDGE OF ALLEGIANCE** at 7:01 p.m.

**ROLL CALL:** D. White, C. Dye, A. Jenema, J. Aukerman, D. Nelson, P. Scott,  
D. Hoxsie

**Members excused:** None

**Staff present:** J. Jocks, Legal Counsel

**A. LIMITED PUBLIC COMMENT:**

Ken Engle, 6754 Yuba Rd., (written letter submitted)

**B. APPROVAL OF AGENDA:**

**C. Motion by Jenema to approve the agenda as presented, supported by Scott. Motion carried unanimously.**

**D. INQUIRY AS TO CONFLICTS OF INTEREST:** White recused himself on the Engle's discussion of the PDR program because of his brother Dave White's involvement. Dye was then Chair of meeting.

**E. NEW BUSINESS:**

1. **Discussion on the PDR program.** Dye stated that PDR program discussion for the Engle's farm was changed from the December 3, 2019 Board meeting to this Special Board meeting tonight to have Jocks legal counsel present. Jocks explained that voters of Acme Township approved the millage for the Farmland preservation program to reserve and keep property agricultural. Grand Traverse Regional Land Conservancy handles the purchases, contracts and paperwork of the properties that get approved for this program. This is an at will program for the farmers who are being placed in this program. Engle entered part of his farm into the PDR program in 2012, funding came from the Township, Federal and State governments. Yearly monitoring is done by the Grand Traverse Regional Land Conservancy and easements are to be upheld as defined in the agreement. In the summer of 2019 Engle sold part of this farm property that is currently in the PDR program to Yuba Orchard LLC. The agreement states in *Paragraph (6) section (A) Prohibited actions or restrictions of development rights, under Division: Grantor is prohibited from dividing, subdividing, partitioning or otherwise creating or permitting separate ownership on the protected property.* Because the sale of the property created two owners of the protected property, the Engle's property appears to be in violation of the conservation easement. Jocks has been in contact with the Department of Agriculture and they share the same opinion. If Acme Township fails to enforce the agreement the Federal Government can step in and Acme Township could then be at risk for losing future Farmland funding through grants from Federal and State agencies. Discussion continued and included public input. There is a draft letter presented to the Board for approval to sign that gives Engle notification of the violation and the opportunity to rectify the violation. By serving this letter to the landowner, it begins the processes of enforcing the easement and if possible, making any amendments.

**Motion by Nelson to authorize signature of letter for notification of PDR easement violation, supported by Scott. Roll Call motion carries unanimously, (White recused).**

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**F. PUBLIC COMMENT & OTHER BUSINESS THAT MAY COME BEFORE THE BOARD:**

Brian Kelley, Acme resident, commented on the PDR easement violation.

**ADJOURN: (8:12 p.m.)**

**Motion by Scott to adjourn, supported by Aukerman. Motion carried**

**CERTIFICATION**

I hereby certify that the foregoing is a true and complete copy of a document from the official records of the township.

  
Cathy Dye, CMMC, Acme Township Clerk



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**GENERAL TOWNSHIP MEETING POLICIES**

- A. All cell phones shall be switched to silent mode or turned off.**
- B. Any person may make a video, audio or other record of this meeting. Standing equipment, records, or portable microphones must be located so as not to block audience view.**

**CALL TO ORDER WITH PLEDGE OF ALLEGIANCE**  
**ROLL CALL**

- A. LIMITED PUBLIC COMMENT:**  
Public Comment periods are provided at the beginning and end of each meeting agenda. Members of the public may address the Board regarding any subject of community interest during these periods. Comment during other portions of the agenda may or may not be entertained at the moderator's discretion.
- B. APPROVAL OF AGENDA:**
- C. INQUIRY AS TO CONFLICTS OF INTEREST:**
- D. NEW BUSINESS:**
  - 1. Discussion on the PDR program**
- F. PUBLIC COMMENT & OTHER BUSINESS THAT MAY COME BEFORE THE BOARD:**

**ADJOURN**

Conservation Easement Violation  
Kenneth L. and Janet C. Engle  
December 9, 2019

Acme Township  
6042 Acme Road  
Williamsburg, MI 49690

RE: Conservation Easement Amendment

The conservation easement signed on June 29, 2019 and recorded by the Grand Traverse County Michigan Register of Deeds 2012R-12323 can be amended.

The conservation easement created a new description for tax parcel number 2801-010-001-00 which simultaneously created a new description for tax parcel number 2801-010-002-00 based on the definition of property in the easement the language.

PROPERTY: See legal description attached as Exhibit "A" and survey attached in Exhibit "B" to this Conservation Easement. For purposes of this Conservation Easement, "Protected Property" means all or any part or portion of this land.

A new deed reflecting any change in the parcel description was not prepared and recorded. The recorded deeds are still the original metes and bounds descriptions. The Grantees did not make it clear that the conservation easement made changes in the deed descriptions by preparing and recording new deeds.

Fifth Third Bank holds a home mortgage and home equity line of credit on the residence on parcel 2801-010-002-00. These obligations were in place before the easement and subordinated to the easement. The Grantor contacted Fifth Third Bank prior to signing the easement inquiring about paying off the mortgages. It had not been made clear to the Grantor or Fifth Third Bank that the easement would move the residence from parcel 2801-010-002-00 to parcel 2801-010-001-00. Fifth Third Bank wanted the Grantor to leave the mortgages in place rather than pay them off. The Grantor is using these mortgages to finance an ongoing farming business. Because these mortgages remain in place, the Grantor has made farming decisions based on this financing and investing the easement proceeds in the farming operation.

At the time of the sale of parcel 2801-010-001-00 to Yuba Orchard Company, the Grantor had mortgage loans from Greenstone Farm Credit Services secured by that parcel based on the recorded deed. Those mortgages were paid off at closing.

Financing for Yuba Orchard Company to purchase parcel 2801-010-001-00 and improvements came from the United State Department of Agriculture Rural Development.

The number of property owners is not a "Conservation Value" listed in the conservation easement. Amending the conservation easement will result in the continuation of farming on the protected property. A possible amendment would be changing Section 6. A. from:

Division. Grantor is prohibited from dividing, subdividing, partitioning or otherwise creating or permitting separate ownership on the Protected Property.

To:

Division. Grantor is prohibited from dividing, subdividing, or partitioning the Protected Property.

Farming is the best protection for farmland. This amendment will continue the protection of farmland in the Acme Township Farmland Preservation Zone and not compromise the conservation values or change or permit changes of the use of the Protected Property. Neither alternative suggested by the Attorney General is possible without the likelihood of insolvency and a protracted legal battle.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth L. Engle". The signature is fluid and cursive, with the first name being the most prominent.

Kenneth L. Engle

LETTERHEAD

DATE

Kenneth L. and Janet C. Engle

ADDRESS

Yuba Orchard Company, LLC

NAME [if contact person is known]

ADDRESS

Re: Conservation Easement Violation

Dear Mr. Engle, Ms. Engle, and \_\_\_\_\_:

The purpose of this letter is to address a violation of a conservation easement on property at 8755 Bates Road, Acme Township, Michigan, bearing tax parcel number 01-010-001-00. A copy of the conservation easement is enclosed as Exhibit A.

The conservation easement was granted in 2012 by Kenneth L. Engle and Janet C. Engle to Acme Township, the State of Michigan (through the Michigan Department of Agriculture and Rural Development (MDARD)), and the United States (through the Department of Agriculture, Natural Resources Conservation Service acting on behalf of the Commodity Credit Corporation). As shown on Exhibit A, the conservation easement was recorded with the Grand Traverse County Register of Deeds on June 29, 2012. In exchange for granting the conservation easement and agreeing to be bound by its terms and conditions, the Engles received consideration in the amount of \$402,900.

The property that is subject to the conservation easement's terms is referred to as the Protected Property in the easement and includes the property at 8755 Bates Road. The conservation easement prohibits certain activities on or uses of the Protected Property, including division of the Protected Property. Specifically, paragraph 6.A states, "Grantor is prohibited from dividing, subdividing, partitioning or otherwise creating or permitting separate ownership on the Protected Property."

It is the understanding of Acme Township and MDARD that the Engles transferred the property at 8755 Bates Road to Yuba Orchard Company, LLC, on July 12, 2019. A copy of the deed of transfer is attached as Exhibit B. It is also the understanding of Acme Township and MDARD that the Engles retained the remainder of the Protected Property. As a result, the Protected Property is now partly owned by the Engles and partly owned by Yuba Orchard. It is the position of Acme Township and MDARD that the separate ownership of the Protected Property by the Engles and

Yuba Orchard violates the provision of the conservation easement that prohibits division of the Protected Property.

This violation must be addressed immediately. This can be accomplished in one of two ways: (1) the portion of the Protected Property that was transferred to Yuba Orchard is transferred back to the Engles or (2) the remainder of the Protected Property is transferred to Yuba Orchard. Under either scenario, the separate ownership would be eliminated because the Protected Property would be owned by a single person or entity.

It is the hope of Acme Township and MDARD that you will take one of the corrective actions noted above within 28 days and promptly provide notice to them at the addresses below.

SIGNATURE FOR ACME TOWNSHIP

SIGNATURE FOR MDARD

cc: Kelly Drake, Assistant Attorney General  
[Township's attorney]