



**ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
6:30 p.m., October 4, 2005**

Meeting called to Order with the Pledge of Allegiance at 6:30 p.m.

Members present: B. Boltres, D. Dunville, W. Kladder, B. Kurtz, P. Scott, E. Takayama, F. Zarafonitis
Members excused: None

INQUIRY AS TO CONFLICTS OF INTEREST: Takayama expressed a conflict regarding the Dental Arts application, as he has performed work for the applicant.

Motion by Kladder, support by Takayama to enter closed session to discuss pending litigation and mediation regarding CCAT v. Acme Township v. The Village at Grand Traverse and Meijer, Inc. because discussion in open session could have a detrimental impact on the township's financial interest. Motion carried by unanimous roll call vote.

Kurtz noted that the date of the mediation was September 19, not September 16 as stated on the agenda.

Open meeting recessed at 6:34 p.m.

Motion by Kladder, support by Takayama to reconvene the open meeting at 7:04 p.m. Motion carried by unanimous roll call vote.

Kurtz recapped the closed session for the public, stating that he and Zarafonitis brought the rest of the Board up to speed on the lawsuit mediation held in September.

A. CONSENT CALENDAR:

Motion by Kladder, support by Takayama to approve the Consent Calendar as printed, including:

RECEIVE AND FILE:

1. **Treasurer's Report** through August 31, 2005
2. **Clerk's Report** dated September 30, 2005
3. Draft unapproved minutes **09/15/05** and **09/26/05** Planning Commission meetings

ACTION:

4. Approval of Board meeting minutes from the **09/06/05 meeting**
5. **Accounts Payable** in the amount of \$116,909.89 through 9/30/05

Motion carried by unanimous roll call vote.

B. LIMITED PUBLIC COMMENT:

Andy Andres, Sr. stated that many people on both sides of the land use debate feel that he is fighting because he has property at the corner of M-72 and Lautner Road he wishes to sell. He stated that he is fighting not to sell his property in particular, but for personal property rights in general. He has spoken to many people, particularly in Springbrook Hills, who ask him what the Board is doing. He feels that people are becoming angry as they wait for the Board to take action to control sprawl and encourage Meijer to build on the west side of Lautner Road.

C. CORRESPONDENCE: None.

D. SPECIAL DISCUSSIONS:

1. **Discussion regarding status of Septage Treatment Plant with Dennis Aloia, County Administrator, and K. Ross Childs, DPW Director:** Kurtz stated that two proposed

resolutions have been prepared for board consideration. One is intended to address a proposed amendment to the contract between the County and Gourdie-Fraser/Christman, the contractors for the septage treatment plant. The other is intended to recommend to the DPW that independent legal counsel be appointed to oversee ongoing review of the facility collapse. Kurtz has attended several meetings regarding this issue, specifically seeking to hear confirmation that “the township’s checkbook will be closed” and that the contractor will cover all costs and expenses relating to the collapse. Acme is one of five townships that might potentially be on the hook. An amendment to the contract was initially approved but later retracted that did not seem to Kurtz to go far enough in protecting the townships’ financial interest. It also increasingly appears to him that the damage to the facility is far worse than originally anticipated.

Mr. Aloia stated that he has not seen the proposed resolutions so he is unprepared to speak to them but willing to provide an update on the situation and answer other questions. Kurtz stated that he is seeking a commitment that the contractors will sign a statement to the effect that they will cover all costs related to the plant collapse. Mr. Aloia feels that a resolution to this effect seems appropriate, and that the contractors agree that they will rebuild at their cost and at no cost to the townships or taxpayers. Mr. Childs confirmed this, adding that he expects the repaired plant to be built to a standard higher than the original. He also stated that the end product from the plant before the collapse was cleaner than had previously been expected.

Zarafonitis asked about the status of the remaining buildings at the site. Mr. Childs stated that all are being examined and will be addressed in the forthcoming final forensic engineering report. Mr. Aloia stated that there is a possibility that some of the remaining buildings are damaged. Mr. Childs confirmed that all documents related to the situation will be publicly available.

Kladder asked why there might be resistance on the part of the contractor to sign an agreement to cover all costs. Mr. Childs believes something will be signed, but that all parties have an interest in being certain of all the details and in clearly spelling out all of the details of the expectations. He expects that the final report will be returned during October. Mr. Aloia expressed less optimism, noting that if the study returns results and repair recommendations that are not agreed upon by the contractor and/or the insurance agencies, one party or another will expect further discussion. Zarafonitis asked if the plant can still be fully on-line by February 2006; both gentlemen feel that this previous target is now too optimistic but early summer 2006 may still be possible. There was a clause in the agreement that if the parties disagree about how to complete repairs, the County’s design would reign; this agreement has yet to be signed.

Kladder asked who would pay for legal costs if the matter goes to litigation. Mr. Aloia stated that a way to fund them up front would be needed, and the litigation would seek legal expense reimbursement as part of any settlement. No party is eager to “sign a blank check.” The townships might be asked to provide legal costs, and the County might be able and willing to assist. Litigation is not inevitable; all the bills incurred to this point to the tune of approximately \$80,000 have been sent to Gourdie Fraser and full, prompt payment by them is expected.

Takayama asked if the proposed resolutions were drafted by legal counsel; they were prepared by Corpe and approved with minor revisions by Chris Bzdok. Kladder perceives them to be non-binding resolutions of support.

Motion by Kladder, support by Takayama to adopt Resolution #R-2005-17, “Grand Traverse County Septage Treatment Plant” as presented.

Takayama asked if the second paragraph from the bottom should be amended to recognize

Mr. Aloia's comments that the proposed contract amendments specify that if there is disagreement about the form repairs should take the County's position will govern.

Zarafonitis asked what Mr. Aloia said at last month's meeting about lost revenues. Mr. Aloia said that close to \$19,000 in revenues are determined to have been lost during the time period when the plant was entirely shut down. The plant is now partially operational, at lower operating costs as well as lower operating revenues, so it might be difficult to claim damages based on anticipated full operational revenue projections. Also, the plant was only full operational for 6 weeks which is not enough time to establish a revenue stream history. During those 6 weeks the level of revenue was lower than anticipated, but at startup some waste was accepted for free to start the plant.

Motion carried by unanimous roll call vote.

Kurtz directed attention to the second proposed resolution requesting appointment of independent legal counsel. He noted that there was active discussion at the Sewer & Water Committee as to who should be hired to conduct the forensic investigation. Kurtz favored requesting bids from the local engineering firms who do forensic work, but Mr. Michael Houlihan, legal counsel to the DPW, opined that any local firm would be "too close" to the situation. Kurtz replied that perhaps Mr. Houlihan was too close to the situation. Kurtz is also concerned over recent statements by Mr. Houlihan that some of the documents and work product related to the forensic study were his property and protected from being made public due to attorney/client privilege. It is due to these concerns that he is asking the Board for the second proposed resolution, by which the Board would be asking that any matters related to the septage treatment plant collapse be handled by independent legal counsel appointed by the County Prosecutor.

Mr. Aloia indicated that he and Mr. Childs have discussed these concerns, and both have full confidence in Mr. Houlihan's ability to handle the situation. Mr. Aloia stated that Mr. Houlihan volunteered at a Sewer & Water Committee meeting to step aside in this matter in favor of independent counsel and truly wants the best for a project he has been working on for many years. Many people are talking about all aspects of this process with Mr. Houlihan on a continual basis.

Mr. Aloia stated that several years ago he asked the member townships if they would prefer to have a staff engineer oversee the septage treatment plan, or if they would be comfortable having Mr. Houlihan continue to run the project. At that time the townships indicated that they were very comfortable having Mr. Houlihan continue. If the townships decide at this juncture they would be more comfortable with a different individual with specialized knowledge, the DPW will accede to this request. Mr. Aloia believes that Mr. Houlihan has been trying to come to an amicable resolution to the situation with all parties. If the situation becomes more adversarial, the townships may be required to produce funding for legal fees. The County expresses the "utmost confidence" in Mr. Houlihan and his performance of the job entrusted to him by the township Supervisors. If independent counsel is requested, he believes it should be someone with construction litigation expertise.

Mr. Childs stated that Mr. Houlihan has far more direct and in-depth experience and knowledge of the County sewer and water infrastructure than any other local attorney could. System efficiency has been improved, user costs and fees have been lowered, and the staffing of the entire DPW is first-class.

Kurtz stated that in his opinion it is time to start "planning for the worst, but hoping for the best." He noted that he was invited to participate on a committee regarding the investigative process, but to date no meetings of that proposed group has been held. He respects Mr. Childs and Mr. Houlihan, but feels that in this specific case Mr. Houlihan is too close to the situation and has raised too many public concerns that the process will be anything less than

completely open.

Kladder expressed concerns about the statement that some information might be withheld. Who made the decision to make the statement and how did the change in expressed policy take place? Mr. Aloia noted that no information has been withheld from the public; the newspaper asked what would be made available. Mr. Houlihan initially stated that he didn't want to release working draft papers, and Mr. Aloia believes his intent was to sit down and discuss the initial draft full of the consultant's impressions first to weed out the things on the list that really aren't issues. He was perhaps concerned that releasing the preliminary list before the winnowing had been done would create a false public impression that things are worse than they are. Some of the material may also be confusion to less technically-oriented members of the public. Mr. Aloia stated that all information will be made public, and Mr. Houlihan has confirmed this in a letter to the newspaper.

Kladder asked how Mr. Houlihan fits into the county authority structure. Mr. Aloia stated that there is a Board of Public Works (BPW) that manages sewer, water and solid waste issues. The County has two main functions: system operations and system financing. Additions are designed independently by townships to County specifications and turned over to the County for operation. The BPW is appointed by the County Commission. There is also a Sewer & Water Committee comprised of the Supervisors of Acme, East Bay, Elmwood, Garfield and Peninsula Townships and a County Commissioner. Projects are generated by townships but financed and operated by the County. The County's position in this project has been to defer to township wishes in most instances because the townships pay the bills. This cooperative structure is unique in Mr. Aloia's experience.

Kladder asked who hired the forensic engineering firm. In July the BPW decided that a forensic engineering was needed. In August the Sewer & Water Committee recommended the hiring of a firm called NTH, and this recommendation was adopted by the BPW at the end of August.

Kladder asked Mr. Aloia's opinion on how the township can know when the appropriate time would be to consider bringing in a construction litigation specialist. Mr. Aloia believes that this point in time would come when and if agreement with the contractor cannot be reached that reconstruction will occur to a certain standard and according to a certain payment method. It might not be a matter of Mr. Houlihan stepping aside completely, but of another attorney directing the effort with his assistance.

Scott asked if the level of communication between Messrs. Houlihan and Childs has been good, and Mr. Childs stated that it has been excellent. Kurtz noted that Mr. Childs is receiving \$50/hour and Mr. Houlihan \$150/hour for their efforts. Mr. Childs has extensive previous experience running the DPW. Mr. Houlihan seems to Kurtz to be too emotionally-engaged in the situation. Mr. Childs observed that if the accident had not occurred it is unlikely anyone would be questioning his role, and it is clearly not Mr. Houlihan's fault that the accident occurred. Kurtz reiterated his concerns about Mr. Houlihan actually running the process, and at a high cost. Mr. Childs stated that the time Mr. Houlihan is currently spending on this issue is being reimbursed by Gourdie-Fraser/Christman. The portion of Mr. Childs' time that is being spent on this issue will also be billed to them.

Zarafonitis asked what would be involved in getting replacement counsel up-to-speed on the issue. Mr. Childs stated that it would take some time to identify an individual with the appropriate specialized knowledge, and their time would not be inexpensive.

Kladder expressed appreciation of the opportunity to discuss this question in public meeting, especially after the story published in the newspaper. He applauded Kurtz's efforts to bring the issue to the forefront; however, at this time he sense the confidence that Messrs. Aloia and Childs have in Mr. Houlihan and believe the team should be left in tact at present. Scott

concurring, noting that the proposed resolution can be held in reserve in case it is needed. Takayama also concurred, expressing that if the matter goes to litigation he does not believe that Mr. Houlihan would be the best choice to lead the issue. He believes Mr. Houlihan to be a very fair individual, but that he could not remain neutral when he has formed close bonds through working relationships with Gourdie-Fraser over the years. Zarafonitis concurred entirely with Takayama's statements, feeling that Mr. Houlihan should have some more time to work through the issues at hand. Boltres agreed with Mr. Childs that Mr. Houlihan is the most qualified individual for the position at this time, although he should be cautioned that his attempts to withhold information from the public were inappropriate. Dunville expressed confidence in Mr. Houlihan's experience and also feels that at this time he should remain in place. Kurtz stated willingness to withdraw the proposed motion from the table at this time, but that a close watch must be maintained on the situation. He mentioned that the township's sewer budget at around \$900,000/year is larger than its general operating budget of around \$700,000/year. He expressed respect for Messrs. Aloia and Childs' position.

2. **Introduction of new Community Policing Officer, Deputy Bob Sillers:** Kurtz introduced Deputy Sillers as Acme's new CPO and welcomed him to the community. Deputy Sillers said he is happy to be here and hopes he can fill Deputy McKinley's shoes.

E. **PUBLIC HEARINGS:** None

F. **NEW BUSINESS:**

1. **Consider approval of Application #2004-9P by Dental Arts/Dale Hunter, 8456 Elk Lake Road, Williamsburg MI, for SUP/Site Plan Approval for conversion of a single-family residence at 3635 Kirkland Court to a dental laboratory, said property being currently zoned B-1S, Business Shoreline District:** Josh Standfest of Elmer's Construction presented the application. The existing home was constructed in 1954 and proposed to become a dental laboratory. Such facilities create dental appliances for dentists' offices, and by code are not permitted to have walk-in clientele. They travel to the dental offices to receive and deliver work. Five parking spaces would be provided and could be constructed in a manner that would not require earthwork for soil erosion control purposes. The applicant requested a reduction of 1 parking space from the standard ordinance requirements in consideration of minimizing site impacts and the fact that there is no non-employee traffic to the site. Interior remodeling will be done, the roof will be replaced, and ADA-compliant access will be provided via a ramp to a modified front door access. The property abuts the state-owned railroad right-of-way; on the other side of this is the Scenic Hills subdivision. The right-of-way is 100' wide, and due to the separation the applicant has proposed that instead of the heavy vegetative screening required between commercial and residential uses it would be more beneficial to the residential neighbors and TART users to provide a modest number of canopy trees. Parking is proposed to remain within the front yard area which is also not a standard request in light of the ordinance, but the applicant believes that it is consistent with the development of other parcels on the private road.

Boltres asked how many canopy trees would be provided; 3 are proposed. Boltres asked if a 4th could be provided, but Mr. Standfest stated that there is not enough space to accommodate 4 healthy, full-grown trees. The appearance of the building to the residential uses will not be substantially different than it has been in the past, and because of the 100' separation no vegetative screening is strictly required. Kladder asked about signage; none is proposed because the nature of the business is such that advertising/wayfinding needs are minimal. Zarafonitis asked if the existing landscaping will be improved, as it is currently in disarray; Mr. Hunter stated that it will be. Scott asked if a Dumpster is required; Mr. Standfest stated that a standard household garbage tote/pick-up service will be utilized.

Motion by Zarafonitis, support by Dunville to approve SUP #2004-9P. Motion carried by unanimous roll call vote, excepting Takayama who excused himself due to conflict of interest.

2. **Consider appointment of chairperson for New Urbanism Advisory Committee:** At the last meeting the Board established the New Urbanism Advisory to address the public interest in this form of development by people who have read about it and/or visited New Urbanist development. Many individuals have provided information in this regard to the township. Kurtz is prepared to recommend two individuals for co-chairmanship. The first is Lori Craig, who with her husband owns five local car dealerships. They have been Acme residents for 10 years and are active in New Hope Church. Mrs. Craig hopes to open a small business within the community. The second is Dr. Marc Krakow, a partner in the LochenHeath development with extensive prior experience in land development. He is an emergency room physician at Munson and very interested in becoming more involved in Acme Township affairs. Dr. Krakow and Mrs. Craig both expressed gratitude for being considered for the positions.

Takayama asked both applicants what their experience with New Urbanism has been. Both expressed limited involvement to date, but have been busy becoming better self-educated. Mrs. Craig in particular stated that she feels Acme lacks a feeling of community because of a lack of community space. Takayama followed up by observing that both individuals seem to have very active lives and asking if they felt they could make the time commitments necessary and involved. Dr. Krakow stated that while his experience may be limited to date, he is very eager to learn about what's available and possible and bring that knowledge to the community as his key role. He would seek not to impose his prior history, but to truly bring out in the community what it desired. Mrs. Craig echoed this sentiment. She has been reading a book published by the New Urban News and feels that there is much more to learn.

Motion by Kladder, support by Takayama to appoint Lori Craig and Marc Krakow as Co-Chairs of the New Urbanism Advisory committee. Motion carried by unanimous roll call vote.

3. **Consider appointment and funding of Township Manager position:** Kurtz stated that he has been thinking about this subject for several months. One thing that has impressed him since he has taken office has been the caliber of all of the employees. They have demonstrated a clear orientation towards serving the public and managing costs. He made appreciative comments about each individual staff member, and stated that he is recommending that Sharon Corpe be appointed as the township's first manager. He provided some background history about her tenure in both the region and the township. He believes that the proposed role would serve to tie together key township operations; when one looks at the statutory responsibilities of the township officers they don't overlap or touch to any great degree.

Kladder stated that he feels having a Township Manager is the most effective way for a township to operate. He first became acquainted with Corpe when she began taking minutes for the Planning Commission instead of him so he could participate more fully as a Commissioner. When he took office he was told by several outgoing officials that she was an asset to the township.

Kurtz noted that there are two proposed resolutions for consideration. The first creates the position of Township Manager, eliminates the position of Office & Planning Coordinator and appoints Corpe to the position subject to a performance review in January 2006. The second creates budget amendments necessary to transfer Corpe's salary and related expenses from the Planning & Zoning cost center to the Board of Trustees cost center and reducing the Supervisor's salary by \$3,700.80 to be added to the Township Manager's compensation for the fiscal year.

Motion by Zarafonitis, support by Takayama to adopt Resolution #R-2005-18 Establishing the staff position of Township Manager and appointing Sharon Corpe to the position. Motion carried by unanimous roll call vote.

Motion by Takayama, support by Zarafonitis to adopt Resolution #R-2005-19, 2005-2006 Acme Township Budget Amendment. Motion carried by unanimous roll call vote.

G. OLD BUSINESS: None

H. REPORTS:

1. **County Commissioner's Report** – Larry Inman
2. **Sheriff's Representative Report** – Deputy Bob Sillers
3. **Buildings and Grounds** – Tom Henkel
4. **Zoning** – John Hull

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

None

Meeting adjourned at 9:02 p.m.