



**ACME TOWNSHIP PLANNING COMMISSION MEETING  
ACME TOWNSHIP HALL  
6042 Acme Road, Williamsburg MI 49690  
7:00 p.m. Monday, January 31, 2005**

**Meeting called to Order at 7:00 p.m.**

**Members present:** D. Krause (Acting Chair), B. Carstens, C. David, R. Hardin, D. Morgan, J. Pulcifer, E. Takayama (7:01)

**Members excused:** O. Sherberneau, M. Vermetten

**Staff present:** S. Corpe, Office & Planning Coordinator/Recording Secretary  
C. Bzdok, Interim Township Counsel

**1. Consent Calendar**

**Consent Calendar unanimously accepted as amended to remove item 1e for further consideration, including:**

**Receive and File:**

- a) Minutes of the January 4, 2005 Board of Trustees Meeting (**Attachment A**) included and incorporated by reference)
- b) Pages from [www.fairviewvillage.com](http://www.fairviewvillage.com) provided by Dave Krause depicting a mixed use development (**Attachment B**) included and incorporated by reference)
- c) Article from [www.plainvanillashell.com](http://www.plainvanillashell.com) provided by Dorothy Dunville entitled "Size Does Matter" (**Attachment C**) included and incorporated by reference)
- d) January 7, 2005 MTA Weekly Legislative Report: changes to state law authorizing conditional zoning agreements ("contract zoning"), and copy of PA 577 (**Attachment D**) included and incorporated by reference)

**Action:**

- ~~e) Approve December 20, 2004 meeting minutes (Attachment E included and incorporated by reference)~~
- f) Review and approve agenda, inquiry as to conflicts of interest: approved with no conflicts of interest noted.

**2. Correspondence:**

- a) **E-Mail from Michael Lattas dated 01/05/05 terminating SUP/Site Plan application #2004-21P** (condo units at north end of marina) (**Attachment F**) included and incorporated by reference): David commented that the applicant's anticipated difficulties in bringing the project to fruition were with the County Drain Commission rather than with the Township. Krause disagreed in part, noting that a variance from the ZBA of the waterfront setback requirement would also be required.
- b) **Letter from Gourdie Fraser Associates requesting that the public hearing regarding SUP/Site Plan application #2004-23P by POW Investments (Acme Acres) be moved to February 28, 2005** (**Attachment G**) included and incorporated by reference)
- c) **Memo from Sharon Corpe regarding rescheduled Public Hearing for Proposed Ordinance Amendment #130, Section 8.27, Wineries** (**Attachment H**) included and incorporated by reference): Krause noted that a special meeting has been scheduled for Wednesday, February 9 to discuss the proposed winery ordinance amendment.

3. **Presentation by Patty O'Donnell, NW MI Council of Governments**, regarding the Regional Joint Planning Project: NWMCOG has received a Coastal Zone Management grant to work with the municipalities surrounding Grand Traverse Bay to build awareness about joint planning opportunities pursuant to the Joint Municipal Planning Act. Nine workshops will be scheduled, grouping municipalities into three basic regions. Each region would receive three sessions: a training session, a work session and an action session. The participating municipalities would learn more about their neighbors' ordinances regarding regional issues. Planning Commissioners, staff and City Commissioners are invited to participate. Ms. O'Donnell invited Acme Township to participate; Krause responded that many individuals from the township would like to participate. Ms. O'Donnell will work with Corpe regarding specific session dates.
4. **Consider request by Board of Trustees to discuss adoption of a temporary Zoning Ordinance amendment enacting a moratorium on the construction of "big box" stores (Attachment I** included and incorporated by reference): Krause asked Bzdok to review the materials provided to the Commission. Bzdok stated that the Board of Trustees directed the Commission to consider a moratorium at their January meeting. He expressed the concept that moratoria are legal and do not represent a property taking if constructed thoughtfully, and that according to precedents set in the local Circuit Court system he felt it would be wisest to construct such a moratorium as a zoning ordinance amendment rather than a simple Board resolution. Finally, he informed the Board that any moratorium created at this point would not apply to The Village at Grand Traverse, which is already the subject of a legal process.

Bzdok has prepared a sample resolution by which the Planning Commission would recommend imposition of a moratorium on "big box superstores" to the Board of Trustees, and would also recommend an ordinance amendment creating and defining the moratorium. In part the moratorium would define the size of "big box superstores" and would set the time limit for the moratorium. The time limit must be chosen to be long enough to allow an adequate amount of time to study the issue appropriate and craft ordinance amendments, as well as to hold the public hearing process, but not any longer than required to do the job effectively.

If the Commission chooses to adopt something resembling the proposed moratorium amendment, it would hold a public hearing process the same as for any other zoning ordinance amendment. Bzdok stated that he is not telling the Commission to propose or not propose a moratorium, but to lay out the options and a roadmap for how the task would be done.

Carstens stated that his objection to certain development in the past has been an existing incongruency between the Master Plan and the existing zoning ordinances; therefore he supports this initiative. He also believes that the ordinances in total need to be reviewed, as well as just those dealing with large retail outlets. David agreed with Carstens, expressing that a moratorium should be geared towards amending a specific portion of the ordinance at this time as the beginning of an ongoing ordinance review process. Morgan concurred.

Receiving consensus to proceed, Krause directed discussion towards "filling in the blanks" in the proposed moratorium ordinance. Pulcipher asked which properties in the township would fall under the moratorium. Carstens stated that it would apply to any property in the township on which development of a retail store over a certain size would be proposed.

David read information from the page of Garfield Township retail store sizes. He would feel comfortable with defining the affected type of development as retail stores over 50,000 sq. ft. in size. Carstens concurred. Krause asked about the size of the Acme K-Mart; Corpe's memo reports it to be approximately 90,000 sq. ft. excluding the garden center. Bzdok noted that at a public hearing, comment will be received as to the idea as a whole and the appropriate

building size affected. Subject to that input, the Commission might choose to amend the recommended ordinance to reflect a different building size.

David asked what would happen to any applications received during the time period while the moratorium is being discussed. Bzdok replied that any permits already issued would be unaffected, but if an application is pending it would be affected by the moratorium.

Carstens asked about expected timeframes to adopt a moratorium ordinance and for how long the ordinance should then run. Corpe provided the Commission with a discussion of the potential timeline for adopting the moratorium ordinance (expected shortest timeline would have the Board considering adoption at their early April meeting.) She discussed the process by which an adopted ordinance can be challenged by referendum, which could take a month after adoption at minimum. There is nothing to prevent consideration of ordinance amendments without adoption of a moratorium, or while waiting for the results of a referendum effort. The Commission must evaluate the amount of time it will need to study ordinance amendment issues, but should add on at least two months for the public hearing process leading to adoption. Bzdok pointed out that the proposed moratorium length will be discussed again at public hearing, and that a moratorium can be ended early if work is completed sooner than expected.

Krause believes that the ordinance needs revision and that a moratorium may make sense, however he is concerned that a 50,000 sq. ft. store size is too small to affect. He believes the number should be closer to the 90,000 sq. ft. of the existing K-Mart. Carstens feels that since we are discussing a temporary situation, the smaller store size is warranted. Morgan believes that it is easier to discuss increasing the store size than to discuss decreasing it. Pulcifer feels that economics must be considered to some extent. David feels that 50,000 sq. ft. is small for a superstore, but is the size to consider. Carstens pointed out that 50,000 sq. ft. would be the maximum store size that could be constructed during the moratorium, but that the ultimate ordinance definition could be different after discussion. Consensus was reached to propose a moratorium on stores 50,000 sq. ft. or larger.

Krause asked if a moratorium could be extended if a relatively short time period is chosen. Bzdok would recommend that any extension go through the entire ordinance adoption process again, which Takayama felt could leave a gap during which the township would be unprotected. Bzdok suggested that an amendment extending the moratorium period could commence during the initial moratorium period to alleviate concerns about a gap between expiration and extension.

Consensus was reached to propose a moratorium period of nine months. If the work can be accomplished in a shorter period of time, the moratorium could be rescinded at the same time the ordinance revisions are adopted.

**Motion by David, support by Carstens to schedule a public hearing on February 28, 2005 regarding a proposed ordinance amendment creating a moratorium on consideration of retail projects over 50,000 sq. ft. to expire automatically nine months from date of enactment. Motion carried by a vote of five (5) in favor (Hardin, Takayama, Carstens, David, Morgan), one (1) opposed (Krause) and one (1) abstaining (Pulcifer).**

**5. Public Comment:**

Chuck Walter, 6584 Bates Road, delivered a letter to Owen Sherberneau hoping he would bring it to tonight's meeting and read it into the record. This having not occurred, he read his letter into the record. The letter is included and incorporated by reference, and discussed concerns about recent withdrawal of a proposed development application from Brent Walton,

and over his perception of the way Meijer, Inc. is being treated by the community. He mentioned an editorial published in the *Detroit News* recently about Acme Township and about actions in communities nationwide to change the way large-scale development is addressed.

Ken Petterson, resident of 4217 E. Timberwood Drive and local attorney, read into the record a letter written by Steve Smith, The Village at Grand Traverse, LLC, which is included and incorporated by reference. This letter set forth Mr. Smith's position regarding the history of his development applications and current adversarial relationship between the township and his partnership.

Virginia Tegel, 4810 Bartlett Road, stated that there are approximately 5,000 residents in the township. She has done some math regarding the cost per resident to defend against large scale development, which she lives in Acme Township to avoid living near. She calculated it at about \$20/person.

Steve Smith, The Village at Grand Traverse, LLC. asserted that his letter cannot be contradicted by any township official.

Noelle Knopf, 5795 US 31 North, stated that the tone of Mr. Smith's letter seems to imply that further liability will accrue to the township as a result of recent actions. She opposes spending township funds or risking township assets such as parks and other property to settle a lawsuit. Ms. Knopf hopes the township will think hard before taking on additional risk through litigation, and what the potential outcome may be. The fund balance forward, originally intended to create a new township hall and park could be expended, and it might become necessary to sell Saylor, Bayside, Sanabria and Yuba Creek Natural Area Parks.

Dan Rosa, 4707 Hampshire Drive, asked how much malpractice insurance Bzdok's firm has, in case the township needs to sue him. He noted that there is an \$800 million lawsuit in Manistee. There was been a large lawsuit in the Petoskey area where the township was advised to bail out before losing everything.

**6. Public Hearings:**

a) **Public Hearing regarding Application #2004-14P by Kenneth L. & Janet C. Engle for development of a Winery and Bed & Breakfast operation on property located at 8114 Saylor Road and currently zoned A- 1, Agricultural** (Continued from the 9/27/04, 10/25/04, 11/29/04 and 12/20/04 meetings – Attachment J) included and incorporated by reference): Krause summarized the need to delay further consideration of the application until further consideration is given to the proposed winery ordinance amendments as set forth in Corpe's staff report.

**Motion by Carstens, support by Morgan to continue the public hearing regarding Application #2004-14P to the March 28 meeting. The Chair cast an unanimous ballot, there being no objection.**

b) **Public Hearing regarding Application #2004-20P by Scott Norris/Olde Worlde Custom Homes on behalf of Dr. Charles Lang for Special Use Permit/Site Plan Approval to construct a new Chiropractic Doctor's office on 3.03 acres of land located within the Acme Village Mixed Use Development immediately to the west of the Holiday Inn Express** (Attachment K) included and incorporated by reference): Scott Norris appeared on behalf of the application, and gave a brief summary of the project. He reported that based on discussion at the preliminary hearing and recommendations from the Landscaping Committee, the landscaping plan was amended. Mr. Norris noted that the revised landscaping includes vegetated islands in the parking lot which have reduced the number of available spaces by

three. All improvements are set back from delineated wetlands areas at least 25'. The wetlands were originally delineated in 1996 and were re-delineated this fall as having similar outlines. The Soil Erosion Department has issued a soil erosion permit based on this information. Drainage from site improvements will be directed away from the wetlands and into detention basins. As requested, a partial sidewalk has been depicted along the property frontage in areas where no wetlands are present. Updated impervious surface calculations have been provided demonstrating a 19% site coverage area. Improvements will occur on upland areas that seem to be composed largely of fill material, with no destruction of significant natural vegetation. Exterior lighting will be for security purposes only and mounted in door soffits so as to be down-directed near entranceways. Zero degree cutoff high pressure sodium lighting will be placed in the parking islands for security purposes only.

David recalls that discussion about the sidewalk at the preliminary hearing called for a sidewalk to curve towards the road around the wetlands in the right-of-way. Mr. Norris stated that he cannot place the sidewalk in the right-of-way on a County Road, whereas MDOT does allow construction of sidewalks within their rights-of-way. Hardin notes that the site does provide challenges in this regard, but would like to see some sort of curve to the walk to direct people around the wetlands as opposed to through them. Takayama also asked that the sidewalk be run right to the northeast property line so that it can be connected to the adjacent property when it develops.

Carstens asked about pole height for the parking lot lighting; Mr. Norris is suggesting a 14' height.

#### **Public Hearing opened at 8:24 p.m.**

Ken Engle, 6754 Yuba Road, asked for comments about the proposed parking lot size. Mr. Norris states that the parking area is sized as required by the zoning ordinance (43 spaces), but that the applicant does not expect that this space will be regularly filled by the anticipated 9 employees and 50 cars per day. Mr. Norris and Dr. Lang expect that at maximum 25 spaces will be required right now. Corpe ascertained that Section 7.5.3 of the ordinance permits the Planning Commission to reduce the number of parking spaces below that specified in the ordinance.

Carstens stated that he was impressed that a site that is two-thirds wetlands can be developed in this manner.

Lewis Griffith, 5181 Lautner Road, found Carstens' statements to be self-contradictory, since in the past he has expressed concerns about developments near wetlands.

#### **Public Hearing closed at 8:30 p.m.**

Takayama asked if he interpreted the plans correctly that the parking area would be crowned, directing water towards the road and the wetlands. Mr. Norris responded that the water will be directed towards the retention ponds.

**Motion by Takayama, support by Hardin that approval of Application #2004-20P be recommended to the Board of Trustees, subject to approval of the required land division for the property, provision of outdoor lighting specifications to the Zoning Administrator prior to Land Use Permit issuance, and amendment of the site plan to provide for a maximum of 25 parking spaces. Motion carried by unanimous roll call vote.**

7. **Preliminary Hearings:**

- a) **Continued Preliminary Hearing regarding Application #2004-22P by Michael and Sherry Hedden, 12110 Scotch Hollow Drive, Bath, MI for Special use Permit/Site Plan Approval of a 15-unit single-family residential Open Space Development on 17.63 acres of land located on the east side of Kay Ray Road and the west side of US 31 North and currently zoned A-1, Agricultural and R-2, One Family Urban Residential (Attachment L** included and incorporated by reference): Doug Mansfield, Wells Mansfield, appeared in support of the application. Mr. Mansfield displayed the site plan provided at the December 2004 meeting, prior to excavated borings to determine where septic systems could be placed on the site. It was found that the proposed septic field locations for the home sites on the northeast portion of the property could be above the ridgeline as requested, but that several proposed drainfield sites to the southeast of the key wetlands area did not contain suitable soils. The site plan was therefore amended to remove a proposed private road to the south of the wetlands and relocating the home sites that would be served by that road to direct frontage on Kay Ray Road. At the January 26 County Land Development Review Committee meeting, the Health Department indicated that two test wells would be required. The homes fronting on Kay Ray Road would have shared driveways, and there is some discussion that the Road Commission may request some realignment of the intersection of Kay Ray Road, US 31 North and Yuba Park Road, but no specifics have been provided. Metro Fire is saying that it will request creation of a turnaround or cul-de-sac on the private road coming from Kay Ray Road and serving three houses that seems unreasonable to Mr. Mansfield. If the road were shortened to be no longer than 150' they would eliminate the turnaround requirement. The requirement is hard for him to comprehend when across the street there are much longer driveways with no turnaround areas, and when required cul-de-sac sizes in different township seem to be different sizes, depending on which Fire Department serves the area. In this case, they have requested a 96' radius turning area and paving that will support 75,000 pounds. MDOT approval of the northeastern road connection to US 31 North is pending.

Mr. Mansfield believes that all information except for a discussion of landscaping has been provided at this time. He would like to discuss some landscaping requirement options that would preserve the natural look of the area to a greater extent than street trees spaced every 24' could.

David stated that the plan he was provided shows separate curb cuts for all of the home sites fronting on Kay Ray Road. Mr. Mansfield stated that this was the design prior to meeting with the County but that this has been revised.

Krause asked if the proposed septic fields for the lots fronting Kay Ray road could be moved to the east further to maintain more of a vegetative buffer along the road. Some of the trees in that area seem to him desirable for preservation. Mr. Mansfield replied that due to separation area requirements from a roadside drainage ditch, they had already been advised that the septic fields should be moved another 30' or so to the east.

Krause commended Mr. Mansfield and the Heddens for the work they have done to be responsive to community concerns while working with their site plan.

Carstens asked about the roadside drainage; Mr. Mansfield replied that using these areas in conjunction with the drainage swales permits those swales to be smaller while still effectively managing runoff.

Takayama echoed Krause's thoughts about the drainfields, feeling that the more that

the woods could be preserved, the more aesthetically pleasing the area would remain and the more value the land would retain.

Mr. Mansfield reiterated plans to reconfigure the third lot on the private road coming from Kay Ray to avoid the need for the large turnaround on that road spur. He also stated that the cul-de-sac on the private road coming from US 31 will likely be re-designed as a T- or Y- end. He encouraged townships to work with fire departments to reach reasonable compromises between township desired to minimize impervious surface and fire service desires to protect public safety.

Krause indicated that Mr. Mansfield should sit down with the Landscaping Committee to work out an arrangement for the site.

**Motion by Hardin, support by Takayama to schedule Application #2004-22P for public hearing on February 28. Motion carried by unanimous roll call vote.**

- b) **Preliminary Hearing regarding Application #2005-1P by LochenHeath LLC for Special Use Permit/Site Plan approval for Phase I development of the Lochenheath Open Space Development approved under SUP #2004-6P on approximately 370 acres of land on the west side of US 31 North, immediately to the north of Dock Road and south of the existing LochenHeath development (Attachment M)** included and incorporated by reference): Russ Clark and Dean Connor, R. Clark Associates and Joe Elliott, Gourdie Fraser Associates, presented the application on behalf of LochenHeath LLC. The presentation included a PowerPoint show which is included and incorporated by reference, and available through the township offices.

Takayama asked about mention of existing agricultural tile underneath portions of the property. Mr. Clark stated that it appears that this tile was installed to make conditions favorable for fruit tree farming, and that it drains towards the Music House. This tile is near where the proposed practice park will be. A ridgeline dividing the watershed runs along the western edge of the practice area and is being cut to direct all drainage to the west rather than to the south.

Takayama also asked about possible creation of a left turn lane on northbound US 31 rather than or along with a right-hand passing flare. Mr. Elliott stated that this will likely be part of the discussions with MDOT, and that the geometrics would allow for a left turn lane through revised pavement markings. Takayama feels like a left turn lane will be the safest option for the long run.

Pulcipher asked if the large pile of dirt currently near the proposed office and guardhouse area will be moved; Mr. Clark said it would be as soon as the frost leaves the ground.

**Motion by Carstens, support by Takayama set public hearing for February 28. Motion carried by unanimous roll call vote.**

**8. New Business:**

- a) **Pre-hearing conference with Bill Peyton & Robert Ewing regarding proposed SUP/Site Plan Amendment Application to convert former Traverse Bay Woolen building into a restaurant (Attachment N)** included and incorporated by reference): Messrs. Peyton and Ewing were present to outline their redevelopment plans. They have obtained ZBA approval for re-use of the existing Traverse Bay Woolen Company, which is a grandfathered non-conforming structure. It sits too close to the road right-of-way due to US 31 widening over time.

The gentlemen have an option to purchase the properties containing the former Woolen Company, the Troutsman and Murdick's Fudge. Their reading of the ordinance and understanding of the grandfathered status of the property led them to believe that they could assume the property with only internal remodeling of the buildings. They would like to know how the Commission feels about the requirements for redeveloping the site, and particularly the extent to which improvements to the parking and landscaping would be required. Their goal is to have a restaurant open and operating before the end of the summer, and extensive landscaping would represent a financial stress in this regard. They have held discussions with MDOT regarding the multiple curb cuts on the site and understand that at least the two curb cuts closest to the building on either side must be closed.

Krause encouraged the re-use of the property as intended. He asked how many parking spaces are on site. Mr. Peyton stated that the existing striping is old, but that capacity exists for over 100 parking spaces on the existing asphalt. Takayama asked about the current condition of the asphalt; Mr. Peyton asserts that the pavement on the Woolen Company site only is in fairly decent condition. Takayama stated that the closeness of the building to the roadway doesn't bother him, although he might want to reconsider the building configuration if additions are added later. He would favor asking that the parking lot be brought into compliance with existing regulations.

Mr. Peyton stated that 80 parking spaces are needed for the restaurant use. Krause observed that one landscaped island with a tree is required for every 10 spaces. Mr. Peyton also mentioned that the ordinance customarily requires a landscaped area along the road frontage that are reasonably extensive. He stated that MDOT will be granting them up to a year to make the required curb cut changes.

The Commission discussed the idea of permitting a longer period of time than customary to install the landscaping, perhaps in a phased approach. This idea seemed desirable in the interests of encouraging redevelopment of the property. Mr. Peyton stated that this could also impact the Troutsman and the fudge shop, which have seen decreases in traffic since the Woolen Company.

**9. Old Business:**

- a) **Consider approval December 20, 2004 meeting minutes** ([Attachment E](#) included and incorporated by reference): Takayama noted two typographical errors: on page 3, second paragraph the phrase "side plan" should read "site plan." On page 7 in the first paragraph, no second is listed for the motion. Corpe will listen to the recording to find out who seconded the motion.

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

Carstens would like to expedite completion of the Master Plan Review. He would also like to encourage the Board of Trustees to work quickly towards mirroring the Zoning Ordinance to the Master Plan.

Mr. Engle thanked Corpe for posting all agenda items to the website as promised. He asked that an archive of the meeting packets be provided as well so that older information can be reviewed later on.

Ms. Knopf asked for more details about the proposed restaurant format, but Mr. Ewing stated that it would premature to discuss them.

Mr. Griffith stated that there used to be a 3-week lead time for applications prior to a meeting



being scheduled. After the new administration took effect, the lead time was moved to 4 weeks. He believes this is already causing a difficulty for applicants and a potential delay. Corpe stated that any blame for this situation should not be assessed to the new administration but to her directly. The increase in the application lead time was her idea to allow her time to sufficiently address the increased number of applications that the township is experiencing even in the 3 ½ years she has been working here full time. Mr. Griffith thanked her for being forthcoming in this regard, and stated that if she can't handle the job alone, the township should obtain some additional assistance.

Denny Hoxsie, 6578 M-72 East, cautioned the Commission regarding any potential extension of timeframes to fulfill requirements. In the past it has been difficult to ensure ultimate compliance without a financial bonding requirement.

Mr. Engle noted that Old US 31 across from Kay Ray Road is only a public road for a short distance; the end of that road was abandoned some years ago.

John Zaloudek, 10351 Kay Ray Road, stated that while he does not have a strict definition of open space, he does not believe septic fields should be within such public open space. He asked if the proposed location of fields in protected space was amended, which the Commission assured him it was. Mr. Zaloudek also stated that the copy of the Zoning Ordinance on the website indicates that any proposed open space development containing more than 15 housing units must be served by a common septic system. Corpe replied that this was amended out of the ordinance, and will get back to him with details. Mr. Zaloudek further expressed concern about who will ascertain whether or not significant flows of water from the seeps or other conditions on the Hedden site are flowing through to the bay. Carstens recalls that Vermetten previously asserted that the Army Corps of Engineers, which has jurisdiction over federal waterways such as the bay and linked waterways, has stated it has no interest in this particular situation. Takayama noted that MDEQ will still be required to verify the Wells Mansfield wetland delineation when possible in the spring. Mr. Zaloudek also mentioned a culvert that runs under Kay Ray Road and further connects to Yuba Creek. He is concerned with runoff into the culvert that might reach the creek. Carstens stated that the applicant has asserted that that the culvert doesn't exist, but he and his neighbors are absolutely sure it does.

Eugene LaLone, 9014 Bates Road, stated that he believes it would be a mistake to grant exceptions as part of planning approvals based on hardship.

**Meeting adjourned at 9:59 p.m.**