



**ACME TOWNSHIP PLANNING COMMISSION MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
7:00 p.m. Monday, February 28, 2005**

Meeting called to Order at 7:03 p.m.

Members present: M. Vermetten (Vice Chair), B. Carstens, C. David, R. Hardin, D. Morgan, E. Takayama

Members excused: D. Krause, J. Pulcifer, O. Sherberneau

Staff present: S. Corpe, Office & Planning Coordinator/Recording Secretary
J. Hull, Zoning Administrator
C. Bzdok, Interim Township Counsel

1. Consent Calendar

Motion by Carstens, support by David to approve the Consent Calendar as printed, including:

Receive and File:

- a) Draft unapproved minutes of the **02/01/05 Board of Trustees Meeting**
- b) 02/17/05 *Leelanau Enterprise* Article **“Elmwood to scrap Planning Commission.”**
- c) NW MI Council of Governments **Request for Applications** for 2005 NW MI Planning, Project and Leadership Awards

Action:

- e) Approve **December 20, 2004, January 31 & February 9, 2005** meeting minutes
- f) Review and approve agenda, inquiry as to conflicts of interest: approved with none noted

Motion carried unanimously.

2. Limited Public Comment: None

3. Correspondence:

- a) **Letter dated 02/17/05** from LaVern (“Andy Sr.”) Andres, 4946 E. M-72: read into the record by Carstens at Mr. Andres’ request, and included and incorporated by reference.
- b) **E-mail dated 02/15/05** from Brad Kaye, Gourdie Fraser Associates, requesting that the public hearing regarding SUP/Site Plan application #2004-23P by POW Investments (Acme Acres) be moved to March 28, 2005: included and incorporated by reference
- c) **Letter dated 02/24/05** from Northern Michigan Environmental Action Council: read into the record by Carstens, and included and incorporated by reference.

4. Public Hearings:

- a) Public Hearing regarding **proposed Zoning Ordinance Amendment #131,**

Moratorium on the construction of “big box” stores:

Public Hearing opened at 7:17 p.m.

Vermetten asked Corpe to summarize her memo. Corpe suggested that Bzdok review briefly the proposed ordinance language. Bzdok reported that the proposed moratorium is composed as a zoning amendment as required by precedent in the local Circuit Court, and because adopting it in this fashion allows for public input. There is a resolution with findings of fact that accompanies it. The ordinance would put a temporary halt to construction of stores over a certain size while research is done and perhaps comprehensive ordinances to address large scale retail development are drafted. Mr. Bzdok recounted the various sections of the ordinance, which include definitions, and at the current time a statement that development reviews for stores over 50,000 sq. ft. will not proceed for 9 months from date of enactment. There is also language which discusses the termination of the moratorium at the end of the process. The moratorium could be terminated earlier than 9 months from adoption if the work is complete. The size of store subjected to the moratorium will likely be the subject of discussion this evening. There is a provision that approvals already granted will not be subject to the moratorium. Corpe summarized her staff memo for the public.

Chuck Walter, 6584 Bates Road, addressed Corpe’s comments about researching moratoria nationwide. How can looking at only a few be indicative of anything? If you look at one, you should look at all. There are many problems to be addressed, and we need to work with other agencies to solve those problems. Our roads and intersections are a problem, so the community needs to work with MDOT and the Road Commission in this regard. Does one store size cause a problem different from another? We need more discussion and problem solving, and he does not believe either the current Board or Planning Commission are pursuing this path.

Timothy Stoepker, Dickinson, Wright stated that a letter had been sent dated February 25, 2005 to the township on behalf of Meijer, Inc., which is included and incorporated by reference. They believe that the Meijer application has been submitted and is only subject to site plan review. They feel they are being held up unduly to allow time for what they believe is an unlawful amendment to the zoning ordinance to occur under the guise of staff seeking an interpretation of whether or not the application is subject to a public hearing. Mr. Stoepker stated that he perceives the Master Plan to be very clear regarding the inclusion of a Meijer store in the community on the property the company owns. The property is zoned appropriately for stores over 50,000 sq. ft. in size, and that zoning designation was upheld through referendum in 1988. The township has indicated that the impacts of large-scale development on the township need to be reviewed as a reason for pursuing a moratorium; Mr. Stoepker believes that this is appropriately done through site plan review. There are only a few properties zoned B-3 in the township, and that the moratorium is too broad a response to a specific question. They believe the proposed ordinance is in conflict with the Master Plan and adoption would be contrary to law. They feel they are entitled to site plan review and that they are being stalled in that process. At one time, Meijer proposed to build within the proposed Village at Grand Traverse to serve as an anchor to the development instead of on their own property, but apparently this is

not desired by the current township administration. Mr. Stoepker characterized the proposed ordinance as arbitrary and capricious. He asked that such an ordinance not be recommended to the Board of Trustees.

Gene Veliquette feels that a moratorium would be ill-advised, giving the Board a chance to “hide for 9 months.” Large stores create employment opportunities. He sells his dried fruits to the Meijer chain. This type of development can be a great asset to a community.

Dan Hanna, 7239 Lautner Road asked that the Board “leave our Meijer store alone.”

Shawn Husband, 4167 Cranberry Lane, supports the Meijer store. He works at the Meijer on the west side of town and lives in Acme. Large retailers are the way the industry works in the 21st century, and Meijer is a good brand to have if you are going to have a supercenter. He worries about the costs of legal fees that will be incurred at the taxpayers expense. He recently came to the office and asked Corpe about the current level of legal fees incurred. He would like to have “big business” come in and help share the tax burden for better streets and expanded sewer systems. He realizes that if he lived on Lautner Road he might be concerned about a large store in what has been a large field. To him, having a store that has demonstrated that it is community-oriented would be good. He is on the Mt. Holiday Ski Patrol, and knows that Meijer has donated to the facility and the patrol. He had hoped that the new development might bring new parks and soccer fields with it. He was pleased with the look of the proposed Village at Grand Traverse plan, and is disappointed that forward progress has been halted.

Denny Rohn, 9267 Shaw Road, stated that the timing of the moratorium proposal seems to have a negative impact on Meijer. She shops at Meijer herself. She understood the reason for the moratorium to be allowing time for the township to finally work on zoning ordinance amendments that should have been done five years ago after the Master Plan was adopted to make the two documents work together.

Vermetten expressed his understanding that a moratorium is being proposed on “big box” stores that would include the property owned by Meijer, The Village at Grand Traverse, LLC. and all other properties in the township. Bzdok stated that the moratorium would apply to any development of a specified type and size on any property in the township unless specifically excluded in the moratorium ordinance. He further added that the Board first asked the Planning Commission to consider the moratorium at its January 3 meeting. At the Commission’s January 31 meeting they began that consideration. Meijer submitted its application late in the afternoon just prior to the January Commission meeting, after the Board was already discussing a potential moratorium. Therefore, he believes it would be incorrect to characterize the proposed moratorium as being about Meijer. Bzdok also mentioned that he has advised the township to seek a ZBA interpretation about the correct process for entertaining the application in part because Meijer agreed to the SUP process for their earlier application.

Vermetten noted that while the intent of the moratorium is not about the Meijer, it

may be true that the Meijer has been caught up in it. At this time a 9-month moratorium is proposed to gear up township zoning revisions to match the Master Plan tenets. The moratorium period could be shorter if work is done quickly, and it could result in a long-term increase in regulation of large stores.

Bzdok mentioned that the moratorium will automatically expire in no more than 9 months from adoption. An ordinance will be developed that would be enacted and would regulate future development of stores of a certain size. The moratorium does not pre-suppose the future ordinance terms or even that it would be adopted.

John West, 9905 Kay Ray Road, stated that the representative of Meijer made things sound like they were longer-term than they may be. The current application was only submitted in late January. If they build a large store and large parking, that lasts a long time. Meijer seems to be afraid of the potential outcome, so they seem to be rushing to the table.

Dan Rosa, 4707 Hampshire Drive, did some research and could not find the date when current “big box” ordinances were adopted. There are special regulations for stores over 50,000 sq. ft. already.

John Szumera, 4972 Hampshire Drive, believes that the moratorium is just a way for the Board to buy time to stop big box stores entirely. He likes Meijer and would like to see them develop somewhere in the township, although he is disappointed that they are now talking about developing on their own property instead of as part of The Village at Grand Traverse, LLC. He believes this is evidence that CCAT, the “treehugger” group is actually creating sprawl.

Hull provided the information that the relevant section of the ordinance was last amended in 1981.

Chris DeGood, Gourdie Fraser, 123 West Front Street is the individual who personally submitted the application on January 28 at 4:30 p.m. He stated that creating the application was an extensive process that began in December. The work began well before talk of a moratorium occurred. Meijer has owned the parcel for more than 15 years and it is well known that they expected to eventually develop on it. Meijer came before the Planning Commission in 2001, at which time the application ceased mid-process. They have attempted to work with The Village at Grand Traverse, LLC. but have been “thwarted.”

Lewis Griffith, 5181 Lautner Road, owns the other half of the airport (the Meijer parcel includes part of the old Acme Airport.) The property was rezoned at Paul Nine’s request, back when the Horizon Outlet Mall contemplated using the site, and was upheld by referendum. The use for large retail stores has been in place for over 15 years, and now a few people are trying to stop it. In his mind there should not even be a question that they should be allowed to develop there.

Chris Stoppel, 7238 Deepwater Point Road stated that like it or not, there will be growth. Will it all be in one place, or divided into 10 places, or 100? Zoning has allowed sprawl development in the downtown Traverse City area because it has limited building heights. The community might be better off with all of the

development concentrated in one area with open space around it, rather than spread all over.

Larry LaSusa, 7754 Clearwater Court, applauded the Commission's pro-active, thoughtfulness in proposing the moratorium. This evening he has heard a lot of diverging views about development in Acme Township. The Board is asking for time to review legislative processes, and he doesn't believe 9 months is a long enough time to cause a severe impact to any landowner, while it can give the township a better opportunity to review the rules for the development that will impact the community for a long time to come.

Virginia Tegel, 4810 Bartlett Road, asked if anyone noted that Circuit City and ABC Warehouse have recently closed here in town. He believes the township is trying to look to the long-term and prevent vacant storefronts less than 10 years down the road.

Mark Nixon, Traverse City, stated that the argument seems to him to be one largely based on design. Simplifying things for discussion, he feels it would be useful for the township to ask a number of groups involved in this debate on the national scale and who have collected data and written reports to find out if the sprawl model is really best for the economic and personal health of the community as opposed to alternative design models. Is the future driven by designs put forth by competitive market forces, or is it better to hash out the details of design: scale, access, etc.

Bob Hopkins, 3551 Dock Road, believes that the moratorium seems somewhat arbitrary, although it may be legal. We do have ordinances, and until they are modified to meet the Master Plan they should be followed. The discussion seems to be centering on whether or not Meijer should be in the community. Why not exclude them from the moratorium and allow them to develop, thus removing them from the debate.

Rachelle Babcock, 4261 Bartlett Road, expressed support for the Commission. She has followed the issue over at least a year and seen mistakes made that could have meant an environmental cost. A 9-month moratorium would afford time to take a look at the past, present and future. Once stores and pavement are erected, the planning process is at an end. A "time out" to ponder and iron things out seems important.

Kelly Thayer, Michigan Land Use Institute, supports the moratorium as being necessary and normal. It may not be necessary to inventory every action that has been taken in this regard across the nation, there is clear precedent for taking the action. Taking an amount of time to fully measure and evaluate the impacts of big box stores is key. Size matters and compromise is important. As an example, in markets where there are regulations about store size, Home Depot will build smaller stores of 40,000 sq. ft. A national retailer will follow local regulation. MLUI also believes that the process fosters citizen dialogue, and that is healthy. The moratorium might result in no change at all, but this has risen to the top of the list of concerns and the discussion needs to occur. A "time out" can always be called stalling, but then all planning might be considered stalling. Planning is

reasonable, legal and normal. Big boxes have an enormous impact on a community of a mixed nature. MLUI would be glad to assist in the project. Places and their character vary, and each community must protect its character. This step seems like a good way to do it.

Steven Hayward stated that he is a trained urban planner who has been involved with The Village and is also involved with the Meijer property because he is a trained mediator. When the Village phase 1 site plan review was stalled in December he assisted both sides in evaluating certain economic concerns. Meijer feels that the discussion about big box stores has really been narrowed down to them. He finds it fascinating that people with no real retail experience are judging how large a store has to be to compete in today's environment. A Home Depot can't be compared to a Meijer or Wal-Mart because they operate differently. He asserted that a Home Depot operates basically on consignment and leases rather than owning stores, whereas Meijer buys goods from producers outright. Meijer buys and owns its own property where other stores lease at rates that will not change for at least 30 years. This is why they can board up buildings and walk away – they are leasing over time at below market rates. Meijer proposed a 217,000 sq. ft. store in 2001, and is proposing a store about 230,000 today. In 2001 Meijer was asked by the township, CCAT and other groups to be in Acme Township but on a different parcel of land. Back then, Meijer allowed their application to lapse because the township would not extend the public sewer to their property and they were having difficulty engineering on-site treatment. They began negotiating with Bruce Aikens, a developer previously interested in the Rollert property, but Mr. Aikens could not come to agreement with the township and abandoned his plans. The Village at Grand Traverse, LLC. came along and was originally approved with 2 big box stores under the Town Center Ordinance nearly unanimously. This approval was set aside by the Circuit Court, so The Village reapplied under the Mixed Use Development ordinance. Township representatives were urging The Village to eliminate one big box from their plan and to bring Meijer over into the Village from their site. Meijer agreed to do this, and the township eventually persuaded the Village to eliminate the second store from their site. Essentially, the potential for three big box stores was reduced to the potential for one. Then Meijer submitted for phase 1 site plan review within The Village and the application was tabled indefinitely. He has been involved in a lawsuit between Lowe's and a private individual who has been ordered by the court to pay Lowe's one year's worth of profit in consideration of the delay.

Public Hearing closed at 8:25 p.m.

Takayama stated that he is the Board's representative to the Planning Commission. In early January when the Board discussed the matter, he had no idea that Meijer had plans in the works for their property. The Board was elected by a large number of people, and it seems to him to be obvious what people were expecting from them based on what their campaigned on. They voted for reasoned, controlled growth. In four years there may be a different mixture of people on the Board. It's a stressful and time-consuming job. But right now the township has a Board and Commission where he sees nobody at the table with him who has a special interest in anything but the best for the community's future. Everyone seems to be here because they love the township. The reason for the

moratorium is to study further and do the right thing. They are concerned with what happens to the Meijer property and the Village property. They and the people who voted them in don't want to see strip development all along M-72. None of them ever said they wanted no growth. His campaign card promised that he would work on the zoning ordinance, which should have occurred five years ago. There is one chance to do it right for the future, and that is the Board's sole intent.

Carstens thanked Takayama for his comments. He stated that he has been on the Commission for a long time, and has taken several courses in planning and zoning. Every course stresses that the Master Plan is not worth the paper it is written on if the zoning ordinance doesn't uphold it. He has wondered for years why the other people he has served with seemed unconcerned with this. He likes Meijer because they hire the handicapped. He has worked with the handicapped for over 32 years, and sees many of his former students working there. They pay health benefits. He is not anti-Meijer but he is pro-quality of life. He lived downstate as a child and swam in Lake St. Clair. When he left his community to enter the service and returned in his early 20's he could no longer swim there due to pollution; there was a pool next to the lake. He is here because he loves the natural aspect of the area.

Morgan thinks that the township is about quality of life and not quantity. Smart Growth is key in her opinion. You can't stop growth, but you can stop awkward growth.

David supported Takayama's and Carsten's statements. In his brief time on the Commission they have yet to turn down an application, and some sizeable ones have been presented. Some have been withdrawn, and he supported some of those. He believes there is work to be done to make the ordinance work with the Master Plan. However, he finds inconsistencies within the Master Plan itself. For instance, on page 56 there is discussion about creating a town center with its own unique character. To him, a large box store and parking does not have unique character. He cited other statements regarding character, and that if development is proposed that is contrary to community values it should be turned down. The community needs time. The Master Plan discusses the characteristics of a downtown and that they are opposite those of the "automobile culture." He fears there is a danger that we will end up with the wrong thing.

Morgan mentioned that she shops at Meijers and does not hate them.

Vermetten stated disagreement with many of the comments made by his fellow Commissioners. Somehow this has turned into a discussion about Meijers when it shouldn't have. Meijer has made an application that bears an unfortunate timing relationship to the proposed moratorium. The real issue is a potential decision that will affect the personal property rights of people who are willing to take a risk. He does not support a moratorium. Vermetten stated that about a year ago they began the Master Plan review process, held many special meetings, and over and over noted that the document was worthless unless the zoning ordinance is amended. He doesn't think the work can be done in 9 months, and that 9 months and 50,000 sq. ft. are totally arbitrary figures. The township must make amending the

ordinance a priority, and needs assistance from the outside to prepare a future land use map. In the meantime, he believes the township must continue to process applications pursuant to the zoning ordinance. He recently participated in asking the Board to spend funds to assist, but no developer should be stalled in the process of seeking approval to use their land as it is zoned during that process.

Takayama expressed confusion over Vermetten's statements that the issue has become about Meijer, when the agenda and his materials say it's about planning. Is this about taking time to do things right, or continuing to "fly by the seat of our pants" and allow "haphazard development" to occur? The ordinance does not come anywhere near to matching the Master Plan. He was at a TC-TALUS workshop recently that modeled what would happen in the next 30 years based on development patterns that exist today and were tweaked by the participants. It was frightening to him, and reinforced that how things will look are based on zoning. He believes that those who feel that time is needed to fully study the issue should vote in favor of the moratorium.

Vermetten reiterated that the issue isn't Meijer and that he agrees that the zoning ordinance and Master Plan don't match the way they should. He said that it happens that Meijer is the first entity caught in the situation, and the public's comments indicate that it has become about Meijer when it shouldn't be about them. Takayama felt confused by the end of Vermetten's statement. Meijer has not had an application on the table for years, and not until after the moratorium process was started.

David expressed confusion, thinking that Vermetten is recognizing that the zoning is deficient, but that it should still be used to evaluate the Meijer application. Vermetten stated that he believes that work should be expedited to repair the ordinance, but that applications should still be considered by it in the meantime. He pointed out that there are other items on the agenda this evening that will be considered by the ordinance. To him, the issue is personal property rights, and the type of land use over which those rights are being exercised is not relevant.

Morgan stated that this became a Meijer issue because Meijer has made themselves the issue.

Hardin believes that the purpose of the moratorium is the problem that the zoning ordinance needs to be brought up to par with the Master Plan. The proposed moratorium would not stop development below a certain size or of types not mentioned over nine months or less. It only affects those types of development that would have the biggest impact on the largest pieces of property in the township. There will never be a good time to amend the ordinance, because someone will always complain about the potential effect on their property. Repairing the ordinance must start sometime, and there's no sense in delaying. Things won't get better if the process doesn't start; we will continue to be reactive. In his short time on the Commission, there have been constant discussions and concerns about conflicts over meanings and procedures. If there have to be that many arguments, things aren't clear enough and they need to be fixed. We shouldn't wait to fix them all until they pile up. Otherwise, we do a disservice to The Village, Meijer and the community.

Takayama agreed, stating that this seems like the first pro-active step taken by the township in a long time. Reactivity does not make for good growth. Vermetten feels it would be pro-active to continue to work on the ordinance as discussed, but he sees no reason for a moratorium to proceed with that process. Applications are rarely black and white, and he's glad because it does create public discussion. People will always read the same thing and come to different conclusions, and that's okay. Hardin stated that if a developer can't pick up the ordinance and be able to easily tell if they meet or don't meet requirements, changes are needed. He is not seeking to avoid discussion but to encourage it, and hopes everyone will show up to debate the issue.

Motion by Carstens, support by Morgan, to recommend approval of proposed Ordinance Amendment #131, Article XIII in entirety to the Board of Trustees as presented. Motion carried (Hardin yes, Carstens yes, Takayama Yes, Vermetten No, Morgan yes, David, yes)

Vermetten declared a recess at 8:50 p.m. which ended at 8:55 p.m.

- b) Public Hearing on Application #2004-22P by Michael & 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 & R-2, One Family Urban Residential: Corpe explained that in the middle of last week MDOT provided feedback regarding the application, stating that in order to receive approval of a curb cut for a new roadway on US 31, an existing passing lane would have to be extended and the intersection of US 31 and Kay Ray Roads reconfigured to meet at a right angle. The applicant needed more time to review this new information.

Public Hearing opened at 8:56 p.m.

John Zaloudek, 10351 Kay Ray Road, introduced the letter he wrote on behalf of Friends for Yuba Preservation. It has been determined that there are wetlands on the Hedden property, but it is unknown if or how it connects to the bay. Further, there is a culvert that runs under the intersection of US 31 and Kay Ray Road, and it is uncertain what runs through that pipe or how close it comes to where Yuba Creek surfaces in that area. The general slope of the land is towards the west, and the group strongly urges careful consideration of the hydrogeologic issues as part of the hearing process.

Public Hearing closed at 8:59 p.m.

Motion by Takayama, support by David to continue the public hearing regarding Application #2004-22P to the March 28 meeting, Motion carried unanimously.

- c) Public 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: Dean Connors, R. Clark Associates and Joe Elliot, Gourdie Fraser provided a PowerPoint presentation in support of the application for phase 1 site plan review of the LochenHeath development. The Conceptual Site Plan has been approved by the Commission and Board.

Phase 1 includes a new entranceway into the newly enlarged development. The current entrance is on Maitland Road, which will become a service entrance only. The proposed new entrance would have a guard house. The current sales center would become administrative offices, and the current maintenance building would become the sales center. A new members pavilion is to be constructed near the existing temporary clubhouse facility. The proposed design for the guardhouse was displayed. There would also be a structure for mailboxes and a bus stop. Stonefacing, stucco and slate roofs will give an old-world character to the project.

A cross-section of the proposed new entrance boulevard shows that it will slope downwards to the west. The pedestrian way will be higher than one traffic lane which will in turn be higher than the other traffic lane.

Ironwork fences atop stone bases are proposed along the roadside to tie in with the signage and lead to the main entrance boulevard.

The new entrance will be near an existing residence, almost precisely as originally proposed. MDOT has approved site distance, although the traffic study has led to addition of a right turn lane into the development and a flare lane on the northbound side so that traffic can continue north on US 31 if people are turning left into the property.

A drainage plan was discussed showing how water will flow into planned drainage ponds. There is already a parking area near where the members pavilion will be that has a drainage system and storm sewer in place leading to a storage basin in the woods. This basin will still be used; any overflow will go to an irrigation lake in the golf course. The Drain Commission has provided conceptual approval of the drainage plans as of today. No new water exit points are planned for the site. Takayama noted that during last summer's hearing there was discussion of an existing tile field. It exits near an old white farmhouse; the water eventually reaches the GT Resort golf courses. For now this flow would be maintained, although in the future it may be redirected to the west. Takayama asked if the construction of the new roadway will disturb the agricultural drain tile; this is not anticipated but things may change once construction begins. Pete Bruski at Soil Erosion is aware of the situation.

Water service will be provided through the existing LochenHeath systems. Existing septic systems will also be used.

Carstens asked if trees along the boulevard would be continuous. Mr. Connor stated that they would be clustered. The fence would only exist near the entrance to the development. Carstens asked if large piles of dirt would be made during boulevard creation. Pulcifer's orchards neighbor the site and he has expressed

concern over piles of dirt that were left over from recontouring the golf course.

A schematic of the new entrance from US 31 was displayed. There would be some temporary construction staging next to the boulevard entrance. The internal roadway system involves two rotary intersections where it will tie in to existing and future roadways within the development.

David asked for clarification of the number of entrances from US 31. The total is three. The existing entrance to the clubhouse area would be gated and accessible only to emergency and service vehicles. The only public access would be at the new boulevard entrance. Maitland Road is currently a public road but there are discussions about it becoming a private road and placement of the gate in a way that will be favorable to the development and to Mr. Pulcipher.

Public Hearing opened at 9:23 p.m.

John Kennedy, 4765 Arthur Court, asked about the process to close a public road. Mr. Elliot stated that one would apply to the County Road Commission to abandon a road, and there is an entire process in place. This could happen to any public road where there is interest. The abandoned road generally reverts to the adjacent property owners.

Corpe noted that letters were received today from Metro Fire and the Drain Commission stating that there would be no concerns from either agency with continued township consideration of the project. Mr. Elliot stated that Fire Inspector Belcher has expressed a concern with the gates and how access can be gained. Research is being done with manufacturers into systems where emergency service providers can use transponders or have gates that are sensitive to strobing lights and automatically open.

Morgan asked about the proposed lighting and whether it will be used throughout the development. Mr. Connors stated that they have not decided on an actual fixture at this time.

Vermetten noted that the Drain Commissioner has granted conceptual approval for the drainage plan for the new entrance only. This is as distinct from the complete new open space development.

Takayama noted the letter received today from C.F. Campbell, which he read into the record and which is included and incorporated by reference. He lives on Woodridge Drive and states that agreements regarding landscaping that would be performed by LochenHeath to buffer the Woodridge properties have not been entirely followed. Mr. Connors stated that LochenHeath wants to keep the neighbors happy and will strive to ensure that any requirements are met. David noted that the area Mr. Campbell is discussing is on the far north side of the property, away from the area proposed to be under development.

Public Hearing closed at 9:33 p.m.

Carstens asked Corpe if conditions regarding Mr. Campbell's concerns can be imposed when the phase of the development near the project is under discussion.

Mrs. Campbell is in the audience, and was advised that since the portion of the project near her is not under discussion, conditions should not be imposed at this time.

Motion by Takayama, support by David to recommend approval of Application #2005-1P contingent upon final approval of the Soil Erosion Plans. Motion carried unanimously.

5. Preliminary Hearings:

- a) Preliminary Hearing regarding **Application #2005-2P by Bill Peyton and Bob Ewing** for SUP/Site Plan amendment approval to convert former Traverse Bay Woolen retail store to a full-service restaurant on property located at 4290 US 31 North and currently zoned B-2, General Business: Messrs. Peyton and Ewing were present in support of their application. They approached the Commission last month regarding the question of whether or not parking lot improvements will be required, as they are not making structural or cosmetic changes to the property. The Commission sought further input from staff and township counsel, and Corpe provided a memo summarizing the position discussed by Corpe, Hull and Bzdok that parking lot requirements can be required. The applicants responded with a letter. Their response is that they do not feel it has been clearly demonstrated to them that the parking lot improvements can be required at this time through the ordinance language.

Starting with the beginning of the township's February 11 memo, they are unconvinced that the change is not either an insignificant or minor change to the existing Special Use Permit. They feel that staff and counsel are "reaching" in their arguments.

Mr. Peyton then referred to where the memo quotes a section of the Township Master Plan, which requires provision of landscaping on "all new or rehabilitated sites." The ordinance does not define "rehabilitated," so the memo cited the dictionary definition as the ordinance requires for undefined terms. Mr. Peyton argues that the site is not the subject of rehabilitation, as it could be reopened tomorrow as a retail store with no change to the site.

Finally, Mr. Peyton took exception to the examples of precedent for the requirement offered in the memo, stating that none of them were directly analogous to the situation at hand because exterior improvements were done to the comparable situations but will not be done in theirs.

Motion by Carstens, support by David to extend the meeting to 10:45 p.m. Motion carried unanimously.

Mr. Peyton stated that there are currently four curb cuts on the Traverse Bay Woolen Property site, two of which are located on the property itself. The two curb cuts immediately on either side of the Woolen building will be closed per MDOT requirements. At that time they will be installing landscaping; they don't feel they should have to tear up the rest of the parking lot now to install landscaped islands, irrigation and electric service for lighting because they are reusing an existing structure with only interior remodeling to occur. They would

like to make improvements to the property, but feel they should have the right to do it on their timetable rather than having to do it at the time of opening the business.

Takayama stated that the Woolen Company was primarily a daytime operation and didn't need outside lighting; a restaurant will be open after dark for dinner hours. He referred the question regarding change of use to Bzdok and how it impacts the situation.

David noted that the ZBA has made a ruling regarding the change in use of the grandfathered non-conforming structure. Corpe and Hull reported that the ZBA permitted the change in use from retail to restaurant without having to modify the building to make it conform to front setback requirements. This is the only matter the ZBA addressed. Hull does believe that the change from retail to restaurant is clearly a change of use.

Carstens asked Corpe about the requirements for the Beaversmith property when Beaversmith was created. Corpe replied that the sidewalk requirements were deferred, and there were problems with obtaining landscaping compliance that Sherrin Hood addressed with the property owner. Because of this and several other situations, the landscaping ordinance was amended with language provided by Krause and Corpe to require installation within one month of occupancy, with the exception that if occupancy occurred after October the requirement would be deferred until the following May 1.

Vermetten found elements of both sides of the debate persuasive. Corpe noted that a determination has been made, and the administrative relief when a determination is debated is to seek a ruling from the ZBA. Vermetten agreed with this statement, feeling that a preliminary hearing is not the appropriate forum to address the issue. Mr. Peyton felt that a firm yes or no would result through the Planning Commission. Takayama stated that it was his impression that the question was whether or not the applicant should be made to install the parking lot improvements when they are trying to open their establishment by the summer. Vermetten stated, and the applicant agreed that the question is not whether the improvements will be installed, but whether it will be voluntary or compulsory.

Corpe read from Section 5.2.2 of the Zoning Ordinance which states that if there is dissention from a ruling made by the individual who administers the ordinance, the ZBA hears the matter and makes a final decision. There was general discussion about scheduling of a ZBA hearing relative to the ongoing Commission schedule.

Bzdok stated that staff consulted with him regarding whether or not the township can require site improvements, and a staff determination was subsequently made. The Commission need only set a public hearing date. The determination stands unless the applicants approach the ZBA to appeal the determination and are successful.

Motion by Carstens, support by Takayama that public hearing on Application #2005-2P be scheduled for the March 28 meeting.

Takayama has an issue with the billboard. Even though it is in East Bay Township he would like to have it addressed. Mr. Peyton stated that the applicants are not buying the parcel of land containing the billboard.

Motion carried unanimously.

6. New Business:

- a) Discussion with Nels Veliquette about **feasibility of entertaining a conditional rezoning request** from A-1, Agricultural to R-2, Urban Residential for property located at 9018 US 31 North: Mr. Veliquette noted that he would request a zoning change to R-1 and not to R-2 as stated on the agenda. He noted that the Commission should have copies of information regarding new changes to zoning law that permit consideration of conditional rezoning requests. He is asking whether the Commission would consider a voluntary application for a conditional rezoning request which he believes would be in keeping with the township Master Plan. He also asked for any suggestions as to how the request might be accomplished cooperatively through a pre-application process.

Vermetten asked Hull to review his memo regarding this topic and the question of spot zoning, which he found to be excellent. He noted that the law change is very recent and cutting-edge. One concern that could come up would be the question of whether or not the proposed rezoning would be a “spot zoning” request, which he addressed by drawing on information received at a recent zoning training session. Hull gave a detailed summary of his memo.

Takayama looked at the property on Sunday, particularly in reference to the Yuba Creek Natural Area. He is uncertain of whether the eastern portion of the property would be truly developable. He personally would also find five houses in that area to look odd, and would prefer to remain with the two homes permitted as a use by right. He fears that if five houses were built, all the trees on that part of the property would be removed and make them stand out more. There are houses along the west side of US 31, but a cluster of houses on the east side would seem inappropriate. He would rather have Mr. Veliquette discuss options with the Grand Traverse Regional Land Conservancy for them to acquire the land and add it to the YCNA at some benefit to his family. Mr. Veliquette asked Takayama to discuss how the future 30 years of US 31 looked during the recent TC-TALUS modeling; there were solid houses on the west side of the road.

Mr. Veliquette stated that the project is also possible through the Open Space Development ordinance and a transfer of development rights from another parcel of land. He felt that this mechanism would be better at fostering discussion and a win-win situation. David stated that the request might not fit with the law. He believes the two halves of the property should be considered as separate things. Harden disagreed, believing that the offer would be valid under the law. Carstens asked for Bzdok’s opinion. Bzdok stated that the law is very new and there are no precedents. He suggested the approach, “Does this landowner meet the requirements for a rezoning if the conditions are offered?” The answer could be different than the answer to the question “Does this landowner meet the requirements for a rezoning?” If the landowner would meet the requirements, then

the land should be rezoned. It would be too easy to fall into the negotiation patterns of an SUP process. It is even something that is difficult to discuss in a pre-hearing. The law says that conditions cannot be negotiated.

Vermetten stated that the Commission can't know if a request will be feasible or not. The applicant must do his homework and make his presentation if that's what he chooses to do.

Motion by Carstens, support by Takayama to continue the meeting to 11:00 p.m. Motion carried unanimously.

- b) Request by William Rennie for **consideration of Sign Ordinance amendment** to permit off-site signage for agricultural operations: Mr. Rennie noted that the Acme Township ordinance does not permit off-site directional signage. He also stated that State Senator Jason Allen has talked with him, and there may be new legislation helpful agricultural entities who want off-site signage. He wondered what the township's position would be if the proposed legislation went through. Also, currently if he places a sign that can be seen from an MDOT-regulated roadway, he pays a fee to MDOT; if the new law goes through the fee might be waived.

Carstens stated that this is an interesting question, and that he appreciates the opportunity to hear about pending changes in advance and have time to think about them. He believes that the township does want to support continued agriculture in the community. He has birded on the property and it's a very special place that deserves preservation.

Vermetten stated that he believed that Mr. Rennie has "the sympathy and ear" of the township. Mr. Rennie is hoping for a favorable solution prior to the July 1 ripening of his cherries. Vermetten encouraged him to stay in contact with Corpe and Hull with new developments.

- c) Memo from John Hull, Zoning Administrator regarding **application by Meijer, Inc.** to develop a shopping center with gas station at the southeast corner of M-72 East and Lautner Roads: Hull stated that it was his goal to update the township on the status of the development application submitted by Meijer at the end of January, and summarized his memo. Meijer, Inc asserts that their planned use of their property is a use by right as the property as zoned; the township asserts that the Special Use Permit application process is required. The matter is going to the ZBA for decision on March 16.

Hull also noted that the RFQ sent out seeking a planning firm to offer development plan review services relative to The Village was amended to also seek assistance with the Meijer application as well. This application may also require additional technical expertise during review. The committee handling the RFQ process is prepared to recommend a firm to the Board of Trustees tomorrow evening.

7. Old Business:

- a) Update regarding **Joint Planning Workshop** presented by Patty O'Donnell,

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

Mr. Gene Veliquette amplified on his earlier statement that he does not believe a moratorium is a good idea. He stated that the Board should feel that they are on safe ground relying on legal counsel's opinions. Reasonable people in the audience have listened to arguments on both side of the issue; Mr. Veliquette believes that Mr. Bzdok needs to improve his arguments or he will lose. Most people appear to be siding with Meijer on this issue. If the advice of counsel lands the township in trouble, he believes we should be assured that counsel has adequate insurance to cover the township's liability if the township loses. It would be especially sad to the taxpayers to like Meijer to foot the bill as lawyers "duke it out in court."

Bzdok stated that it is not his place to say whether or not there should be a moratorium or an ordinance, and on what. It is his place to say that if we want to do something, this is the way to do it. He is sued and threatened frequently, but has never paid a dime to date. People have the right to move an issue to court if they choose.

Vermetten stated that Mr. Bzdok works for Acme Township. The Commission relies on others for input as well. Those people are offering their judgment and opinion. He is not hired to recommend or not recommend; he provides information based on which the Commission makes their decision. Bzdok was asked to offer advice as to the legality of the proposed moratorium only.

Corpe mentioned that the former Beaversmith building has been torn down, rather than being remodeled as expected. The applicant found that a better result could be achieved more cost-effectively by building anew, and is also being moved six inches to completely conform with setback requirements. Corpe felt that the end result would be indistinguishable, so she issued an insignificant change permit.

Corpe has also been asked to join Charles Blankenship from the Chamber and New Designs for Growth in giving a brief presentation at the next Chamber breakfast on March 17. New Designs for Growth is working on some potential model transportation corridor overlay district zoning ordinance language. Mr. Blankenship will speak about the project, and Corpe is to speak for about 10 minutes regarding Acme Township's experience with considering an M-72 Corridor overlay district. If anyone has suggestions for her text, she is very open to them.

Takayama received a question during the recess regarding whether or not it was necessary in the motion regarding the moratorium to verbally specify the size of developments subject to it or the length of time. Bzdok and Corpe replied that the motion adopted the text as presented, which was widely available and was published verbatim in the newspaper.

Meeting adjourned at 11:07 p.m.