



**ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
6:00 p.m. September 5, 2006**

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

Members present: B. Boltres, D. Dunville, W. Kladder, B. Kurtz, P. Scott, E. Takayama, F. Zarafonitis
Members excused: None
Staff present: S. Corpe, Township Manager/Recording Secretary
C. Bzdok, Legal Counsel

Motion by Kladder, support by Scott to enter closed session to discuss pending Meijer Inc. v. Acme Township litigation because discussion in open session could have a detrimental impact on the financial interests of the township. Motion carried by unanimous roll call vote.

Public meeting recessed at 6:02 p.m.

Motion by Kladder, support by Scott to resume public session at 7:00 p.m. Motion carried by unanimous roll call vote.

Bzdok informed the public that he provided an update to the Board regarding the status of the Meijer v. Acme litigation. He also stated that he expects the Board to receive and file correspondence from Foster, Swift, Collins & Smith PC stating that the township's former insurance company will be providing some coverage for the case.

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

APPROVAL OF AGENDA

A. CONSENT CALENDAR:

Motion by Dunville, support by Takayama to approve the Consent Calendar as amended to remove approval of the minutes of the 08/01/06 Board meeting for discussion, including:

RECEIVE AND FILE:

1. **Treasurer's Report** as of 08/31/06
2. **Clerk's Report** through 08/29/06
3. Draft unapproved minutes **08/28/06 Planning Commission**
4. Draft unapproved minutes **08/23/06 Parks and Rec Citizens Advisory**
5. **Road Commission approval of placement of the Tourist Oriented Directional Trailblazer Signs (TODS)**
6. **2% Allocation Award from the Grand Traverse Band of Ottawa and Chippewa Indians**

ACTION:

7. Consider approval minutes from ~~08/01/06 regular~~ Township Board Meeting
8. Consider approval of **Accounts Payable** of \$84,236.14 through 08/29/06 (recommend approval: Dunville)
9. Consider request for **lot line adjustment for Lots 1-3 Woodland Acres**
6901 & 6921 Deepwater Pt Road – Ed Graft

Motion carried by unanimous roll call vote.

B. LIMITED PUBLIC COMMENT:

Lewis Griffith, 5181 Lautner Road stated that last month he said that two months earlier the Board placed a restriction on Meijer against operating from midnight to 6:00 a.m., but that Frank Zarafonitis has no restrictions on the use of the new portion of his outdoor deck. Mr. Griffith stated that he clearly indicated that the restriction was placed on Meijer two months prior, and that Zarafonitis' deck restriction was made one month prior. Mr. Griffith stated that the minutes state that the Meijer restriction was placed "several" months ago. He disagrees with this characterization of his statement.

C. CORRESPONDENCE:

1. Letter from **Foster, Swift, Collins & Smith PC dated August 25, 2006** stating that the Par Plan will provide insurance coverage relating to the Meijer v. Acme Case: Kladder read the letter aloud for the public. Bzdok stated that the portion of the lawsuit seeking money from the township will be defended by Foster, Swift on behalf of Midwest Claims/the Par Plan, the township's former insurer. This firm has worked with us on prior related cases and done a good job in his opinion. He looks forward to working with them again.

D. SPECIAL PRESENTATIONS: None

E. PUBLIC HEARINGS: None

F. NEW BUSINESS:

1. Consider adoption of resolution adopting the **National Incident Management System** (recommend approval: Metro Fire): The goal of this resolution to ensure that crises that may arise are handled in a uniform manner across jurisdictions. The township would be adopting national standards promoted by the Department of Homeland Security. Adoption will allow the township to remain eligible for federal funding for disaster recovery. Zarafonitis read the letter aloud for the public's benefit.

Motion by Zarafonitis, support by Takayama to adopt Resolution #R-2006-14, National Incident Management System. Motion carried by unanimous roll call vote.

2. Consider approval of proposed budget amendments – **2005/06 Fiscal year:** Corpe provided highlights from her two memos about the state of the budget for the 2005-06 fiscal year. The annual audit will commence on September 25.

Motion by Kladder, support by Scott to adopt Resolution #R-2006-15 amending the 2005-06 fiscal year budget. Motion carried by unanimous roll call vote.

3. Consider approval of **SUP/Site Plan Application #2006-05P, open-space residential development for Cherries R Us at 9018 US Highway 31 North:** Hull provided an overview of the project, a 5-home development on 11 acres currently containing a homestead and an unoccupied home and extending approximately 1/5 of a mile into the Yuba Creek Natural Area (YCNA). The property owners are seeking to obtain value from their property but did not want to promote a situation where a house might be constructed on the lower portion of the property in the YCNA valley. After exploring several different development approval options, they are seeking approval through the Open Space Development (OSD) ordinance.

Kladder asked Hull to explain the OSD ordinance. Hull replied that several years ago the state mandated that townships provide a mechanism by which land developers could build on their land by clustering development units on 50% or less of the land, leaving the rest open under a conservation easement. In response the township replaced its PUD ordinance with the current OSD ordinance. As an incentive to cluster development, the township offers an automatic 20% density bonus in return for conservation of sensitive or valuable natural resources. This is the fourth application brought pursuant to the OSD

ordinance. Kladder asked how the protection of the open space is achieved; the developer must provide a conservation easement. Kladder asked who will hold the easement; the ordinance allows for several different options.

Russ Clark, R. Clark Associates presented the project on behalf of Cherries R Us through a PowerPoint presentation. He made note of the topography of the site, which has a steep ridgeline in the middle, and of the existing vegetation, viewsheds and water drainage patterns.

The vacant residence and several outbuildings are proposed to be removed, with the Shaw homestead to remain. Photographs of the property and the views from the property from various vantage points were displayed. Both existing driveways accessing US 31 will be removed, with all sites to be served by a single curb cut off the highway leading to a private road.

Mr. Clark displayed the originally proposed development layout, noting how the individual lots were somewhat larger and allowed for the possibility of development on the steepest slope area. In response to Planning Commission requests, the lots were made somewhat smaller and the buildable areas defined so that development on the slope area can't occur. The amount of open space to be conserved increased from 60% to 62%. Existing trees on the slope will be maintained, although not all of them are depicted on the site plan. Lots will be served by an on-site well and common septic. Various local agencies have reviewed and approved the plan as proposed.

The OSD ordinance allows for the transfer of development density units from non-contiguous parcels of land. The applicant seeks to transfer two development unit rights to reach the five unit density on the project site, and offered a choice between two parcels of land from which to make the transfer. One is adjacent to the processing plant on US 31 north and offers the public views of orchard lands. One is on Brackett Road just west of the campground and has Yuba Creek flowing through it. The Planning Commission determined that the latter parcel has greater conservation value and recommends that the development units be transferred from it. Architectural concepts meld traditional farm and Craftsman styling. The height restriction on houses in the township is 35'.

Kladder asked precisely what the applicant is guaranteeing to the township in terms of architectural design, and whether there would be metal roofs or shingle, or what exterior finish materials could be used. Mr. Clark noted that the specific requirements will be spelled out in the condominium documents and an architectural review committee of the neighborhood will approve plans before construction. Kladder asked what would happen if someone wanted to enlarge their home; they would be permitted to do so as long as they respected required minimum setbacks. The minimum home size will be 1,800 sq. ft.

Zarafonitis asked about discussion about walk-out basements. He expects that anyone who can afford a lot in this project could afford to excavate a below-grade walkout basement. Can there be a guarantee that no walkout basements will be developed? Nels Veliquette, Cherries R. Us feel that current construction requirements in terms of joists and walls would make this difficult at best and that additional restriction isn't required.

Boltres feels that the YCNA Steering Committee should evaluate the application and its potential impact on the natural area and wildlife such as eagles residing in it. Mr. Veliquette stated that he has spoken to their membership very early on in the process and felt that dividing the land into two lots as permitted in the agricultural district, one west and one east, and building a home below the ridgeline would be more intrusive than the type of development currently proposed.

Kladder asked about the conservation easement and what will be spelled out that can and

cannot occur. Can there be walking paths or campfires? The area will be private but will not be visually separate from public areas; will it be posted? Mr. Clark stated that the boundary with the YCNA is already posted. The applicant intends to permit the association to create a trail to traverse the common natural area. A community activity area will be south of the existing homestead and west of the other four homesites. Kladder expressed concern that a private trail connecting to public trails might lead to difficulties. He hopes there will not be fencing that disrupts wildlife migration corridors. Mr. Veliquette stated that the vegetation will be left natural and native.

Kladder asked for an explanation of the development density transfer, and if there were only two areas designated for receiving units. Mr. Clark clarified that there are two areas being offered for sending to the desired receiving areas, all areas being under common ownership. He asked if there is thought of transferring density to other areas; there is not at this time. Kladder is familiar with conservation easements and the need to perform a baseline study and monitor them annually or they can become invalidated. Hull confirmed that the township will be responsible for the annual monitoring. Kladder asked if the township is seeking a fee to endow the annual requirement; Hull stated that the ordinance does not provide for this to be done. Kladder asked who will perform the baseline study; Hull was uncertain. The township fee schedule would indicate that whether the baseline is performed by the township or the landowner, it will be paid for by the landowner as part of their application costs. Kladder asked if the Commission has reviewed the proposed conservation easement; in the past it has been negotiated by legal representatives for the township and landowner. The SUP is not issued until the conservation easement has been finalized. Kladder asked if the proposed conservation easement can be reviewed by the YCNA Steering Committee to ensure it is in keeping with the requirements for that area. Bzdok stated that the state legislates the basic requirements for the conservation easement and these rules are used as the starting point. The basic requirements are generally regulatory, as opposed to what Kladder is familiar with in terms of what the Grand Traverse Regional Conservancy generally requires.

Kladder asked how the units of density to be transferred were determined. The 11 agriculturally-zoned acres allow for 2 development units as a basis. Use of the OSD ordinance automatically increases this by 20%, and there is an additional bonus for preservation of land over and above 50%. The landowner sought to come to five total units, and after doing the math determined that 2 units would have to be transferred to the site.

Zarafonitis asked if it would be possible to have the open space donated to the township or Conservancy as part of the YCNA public area; Mr. Veliquette is under the impression that the open space must remain part of the overall development to keep it in compliance with the ordinance. He would not object to doing so if it is possible. Bzdok stated that the township can't require that ownership or easement method but can recommend it in an approval motion.

Kurtz took a look at the proposed density sending parcel on Brackett Road this afternoon. He believes the project has been well thought out and reviewed thoroughly by the Planning Commission. Kladder noted that there was a question as to whether he would have a conflict of interest in voting on this matter due to membership on the Conservancy Board. He has not been a member for two years. The Conservancy has recently negotiated with the landowner regarding potential purchase of the property. It was always hoped it could be added to the YCNA, but if it cannot this seems a good compromise.

Motion by Kladder, support by Zarafonitis to approve SUP #2006-5P with the condition that the homeowners' association may transfer the open space to the township to become part of the YCNA if they so desire.

Motion amended by Kladder with support from Zarafonitis amended the motion to additionally require that conservation easement be reviewed by the YCNA Steering Committee and monitored on an annual basis.

Bzdok stated having heard the following desires from the Board discussion: Conservation easement consistent with ordinance and having monitoring in place prior to land use permits being issued; allow for transfer of land in fee to be part of YCNA without destroying density benefit to development; submission of condominium documents to the township for approval prior to permit issuance; grade to be as depicted on the site plan; and density transfer documents to be recorded before construction occurs.

Hull noted that the Friends for Yuba preservation took issue with the rounding of density units used to reach five units. They asked that the Board clearly document their findings on this matter. Bzdok recommends placing language regarding this into the SUP document.

Boltres believes the state wildlife commission should be asked to address the impact of the development on wildlife corridors and natural resource protection. Zarafonitis feels the impact of having a large house developed down in the valley would be worse. Kladder noted that Bob Carstens is present and is well-versed in these issues. Boltres does not feel he constitutes an adequate expert.

Motion withdrawn by Kladder.

Motion by Kladder, support by Zarafonitis to approve SUP #2006-5P provided that conservation easement consistent with ordinance and having monitoring in place prior to land use permits being issued; allow for transfer of land in fee to be part of YCNA without destroying density benefit to development; submission of condominium documents to the township for approval prior to permit issuance; grade to be as depicted on the site plan; and density transfer documents to be recorded before construction occurs. Motion carried by a vote of 6 in favor (Dunville, Kladder, Kurtz, Scott, Takayama, Zarafonitis) 0 opposed and 1 abstaining (Boltres).

4. **Consider approval of minutes from 08/01/06 regular Township Board Meeting:** Mr. Griffith is specifically asking that the word “several” used to reflect his comments in the minutes be changed to “two.” He feels that the minutes are inaccurate otherwise, or alternatively that they would indicate inappropriate deliberations about the Meijer SUP document in closed session. Corpe expressed to the Board an understanding that Mr. Griffith is attempting to document his understanding of the relative timeline as to when the Meijer SUP was approved and when the Zarafonitis SUP Minor Amendment was approved, and expressed respect for this desire. She stated that the Board could approve the minutes as presented or amend them in accordance with Mr. Griffith’s suggestion, but that either way his concern has been documented in the minutes for this evening. She also stated that she understands Mr. Griffith to be asserting that the Meijer SUP was adopted two months prior to the August meeting, but this is an erroneous assertion as the SUP was approved at the May meeting, three months earlier and offered to provide a copy of the minutes as proof. Mr. Griffith stated already having a copy and asserted that if the Meijer SUP was approved in May it was done so inappropriately in closed session. Bzdok stated that there have never been discussions or deliberations regarding the Meijer SUP in closed session and that there is no truth to any assertion that anything but pending litigation was discussed in closed session. Judge Rogers reviewed the minutes of the closed sessions as part of prior litigation and determined that what occurred at the closed sessions was legal and appropriate.

Motion by Takayama, support by Zarafonitis to approve the minutes of the 08/01/06 Board meeting as amended to replace the word “several” with the word “two” in Mr. Griffith’s comments.

Scott would support listening to the audio recording of the meeting and using whatever word is on the recording. Takayama doesn’t feel the change is that significant; as it doesn’t change the gist of the meaning. **However, if this is the Board’s desire he will withdraw his motion. Zarafonitis withdrew his support.**

Motion by Kladder, support by Scott to postpone approval of the 08/01/06 Board minutes to the October meeting, and to have staff transcribe Mr. Griffith’s statements. Motion carried by unanimous roll call vote.

G. OLD BUSINESS:

1. **Discuss continuation of extended administrative office hours:** Approximately 6 weeks ago the Board voted to extend office hours from 8:00 a.m. to 6:00 p.m., and have two staffers work 4 10-hour days per week to staff the office. So far the feedback received has been positive, although there may not be widespread awareness. Scott felt that if there have been no complaints he feels the program should continue. Takayama appreciates the idea because it’s difficult for him to access businesses between 9 a.m. and 5:00 p.m.

Scott, support by Zarafonitis to continuing the extended hours to the end of the fiscal year. Motion carried unanimously.

2. **Consider appointment of new Public Safety Advisory Chair:** Former Chair Pat Collins resigned. Kurtz is recommending appointment of advisory member Wayne Mervau, also a member of Battalion 8 and Northflight to replace him.

Motion by Kurtz, support by Zarafonitis to confirm Wayne Mervau as Chair of the Public Safety Advisory. Motion carried unanimously.

H. REPORTS

1. **County Commissioner’s Report – Larry Inman:** received and filed
2. **Parks – Tom Henkel:** received and filed. Kladder feels that some of the levity should be removed from the report as being fun but slightly inappropriate for what it is.
3. **Sheriff’s Deputy – Bob Sillers:** None. Deputy Sillers stated that Central Dispatch is behind on reporting after their physical move.

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

Mr. Veliquette spoke favors the extended office hours.

Corpe drew attention to an e-mail from Cherryland Electric. Many residents of Kay Ray Road are finding the intersection with US 31 more difficult to find in the dark now that it has been separated from Yuba Park Road. It would cost \$420 to install a new streetlight at the new intersection and \$14.50/month for the electricity.

Motion by Boltres, support by Scott to install a streetlight at the intersection of Kay Ray Road and US 31 North. Motion carried by unanimous roll call vote.

Corpe noted that the Parks & Recreation Advisory will be holding a public forum on September 19 at 7:00 p.m. to refresh the public input regarding needs for boat launch improvements in the township last received in September 2004. Boltres voiced objection to the reappointment of

several individuals from the old Waterfront Recreation Subcommittee to the new Parks & Rec Advisory feeling that they did not serve the township well and wasted \$21,000 of public money without gathering enough data.

Hull reported that September 28 will be the last hazardous waste collection by Resource Recovery in 2006.

October 30 will be the beginning of the Public Hearing regarding the proposed Future Land Use Map amendment to the Master Plan.

Mr. Griffith asked if the meeting has been adjourned, noting that Boltres had left the table. He stated this was not the first time he has left before the end of a meeting, and feels this is inappropriate. Boltres stated he had only risen to get a cup of water from the kitchen because he was hoarse.

Meeting adjourned at 8:32 p.m.