



**ACME TOWNSHIP REGULAR BOARD MEETING
ACME TOWNSHIP HALL
6042 Acme Road, Williamsburg MI 49690
6:00 p.m. October 3, 2006**

Meeting called to Order with the Pledge of Allegiance at 6:03 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 Takayama to enter closed session to discuss pending Meijer Inc. v. Acme Township litigation and ongoing settlement negotiations in CCAT v. Acme Township v. The Village at Grand Traverse LLC and Meijer, Inc. 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 6:05 p.m.

Motion by Kladder, support by Takayama to resume public session at 7:12 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 and negotiations.

INQUIRY AS TO CONFLICTS OF INTEREST: None noted.

APPROVAL OF AGENDA:

Motion by Takayama, support by Zarafonitis to approve the agenda as presented. Motion carried unanimously.

A. CONSENT CALENDAR:

Motion by Kladder, support by Scott to approve the Consent Calendar as amended to remove discussion of the August 1, 2006 regular Board meeting minutes for further discussion, including:

RECEIVE AND FILE:

1. **Treasurer's Report** as of 09/30/06
2. **Clerk's Report** through 09/26/06
3. Draft unapproved minutes **09/25/06 Planning Commission**
4. Draft unapproved minutes **09/19/06 Parks and Recreation Citizens Public Forum**

ACTION:

5. Consider approval minutes from the **08/01/06 regular** and **09/05/06 regular** Township Board meetings
6. Consider approval of **Accounts Payable** of \$166,658.03 through 09/26/06 (recommend approval: Dunville)

Motion carried by unanimous roll call vote.

B. LIMITED PUBLIC COMMENT:

Lewis Griffith, 5181 Lautner Road stated that this afternoon he received a call from the township hall asking him to come down and pick up a letter regarding tonight's meeting. He did so, and in

the letter it says that the recording device was dropped and there is no recording of the August 1 meeting. He stated that similar things have happened since this Board took office, that many meeting recordings have been lost. He feels that if the equipment or the operator is faulty it should be repaired or replaced.

C. CORRESPONDENCE:

1. **08/31/06 letter from David Kipley** regarding Scenic Hills dispute: received and filed.
2. **09/28-06 Memo from Brian Bourdages**, Farmland Protection Specialist, regarding response to first Farmland Purchase of Development Rights application cycle: received and filed.

D. SPECIAL PRESENTATIONS: None

E. PUBLIC HEARINGS:

1. **Proposed 2006-07 fiscal year Fire Protection Special Assessment levy rate:** The fire protection special assessment levy rate is established annually. Metro Fire Chief Pat Parker presented information about the proposed Metro Fire budget to the Public Safety Advisory, which in turn prepared the levy recommendation. Chief Parker was present and gave the public a brief overview regarding the department. He provided a timeline for the preparation and discussion of the proposed 2007 Metro Fire budget. Acme Township's SEV increased by about 13% over the past year, outpacing partners East Bay and Garfield at approximately 8% each. Current emergency response times average 8 minutes; the department would like to reach the national average of 4 minutes. They are seeking to open a new fire station on Three Mile Road and reorganizing Metro Fire to make it possible to seek financing to meet long-term goals. Metro is looking for pieces of land in Acme and Garfield Townships for new fire stations, and to add firefighters in 2008. The department answers over 2,300 calls for service per year, which is a need that an all-volunteer force can no longer meet. Much funding has been dedicated to fire prevention, including plan review before construction and regular inspection of going commercial operations. The training requirements for firefighters are steep, including a start-up investment of approximately 9 months. In addition there are new medical requirements and Homeland Security requirements.

Public Hearing opened at 7:26 p.m.

Mr. Griffith asked for a breakdown of how many emergency calls are related to fires and how many to car accidents. Chief Parker did not have figures at hand but stated that due to fire prevention initiatives the number of fire runs are a small portion of the whole. Mr. Griffith stated that he saw the Fire Department respond to an accident near Turtle Creek in a manner that caused their trucks to block the road and increase the traffic backups that already occurred as a result of the accident. He asked if the department could be more sensitive to keeping traffic flowing, or if a wrecker could have responded rather than fire trucks. Chief Parker stated that when they are initially called out they don't know what they will be facing, and they always block at least one lane of traffic so that their firefighters will be protected from oncoming cars.

Margy Goss, 4105 Bay Valley Drive asked Chief Parker to repeat the SEV increase statistics, which were as follows: Acme 13.73%, East Bay 8.88% and Garfield 8.29%. He noted that the special assessment is levied on taxable value, but the SEV represents the total valuation the department protects.

Public Hearing closed at 7:29 p.m.

Kurtz observed that a new Assistant Chief has just been hired to fill the vacancy left when Chief Parker was promoted. Scott asked if the Resort will be bearing any cost for

enhanced duty required by Homeland Security for the National Governors' Convention next July. Chief Parker stated that the department will have to provide a certain level of staffing 24 hours per day, including a senior individual on every shift. The State Police is also asking that the department provide a daily sweep of the Resort facilities for prevention. The event is a Class 2 FEMA event, so some support will be available from them. The Resort will not be footing the bill; the Department is hopeful that some other funding will be forthcoming but is not certain. At present at least 40 governors will attend and perhaps some presidential candidates.

Kladder asked about funds to be set aside to acquire land or construct buildings, and asked if there is anything preventing from being expended for other purposes. He also asked what would happen if some of these funds were to be diverted for equipment purchases. Chief Parker stated that there is a separate budgeted line item for equipment. In the past they always paid cash, but going forward they will need to finance some purchases. Kladder recalls times when the department has borrowed from one area of the budget to fund a different area, and asked how strategic planning has been employed to minimize these occurrences going forward. Scott amplified the question of whether or not money can be transferred between line items without Metro Fire Board approval; Chief Parker replied it cannot.

Motion by Zarafonitis, support by Scott to adopt Resolution #R-2006-16 establishing the Fire District Special Assessment Levy for 2007 at 1.5 mills.

Zarafonitis read the proposed resolution for the audience's benefit.

Motion carried by unanimous roll call vote.

F. NEW BUSINESS:

- 1. Consider adoption of resolution approving Capitalization of Additional Interest regarding Series 2003 and 2004 Septage Treatment Facility Project bonds:** A payment is due on the 2003/04 Septage Treatment Facility bonds in November. The payment includes principal and interest, and it is unlikely that revenues generated by the plant will be able to cover the payments as originally intended. The proposal at hand would use some bond proceeds not expended for construction costs to make the payments, as opposed to requesting additional funding from the townships that guaranteed the County bond issue. It had been expected that some waste from Bay Harbor in Petoskey would start coming to the plant for processing to provide additional revenue during the last week of September, but the start date has been delayed by the DEQ. Some revenues are coming from the processing of wastewater from WRS Receiving in Williamsburg. The plant is expected to be fully repaired and open by October 31; this date has already been delayed from the originally-anticipated summer re-opening and is a target that may or may not be met.

The proposed resolution has been prepared by Michael Houlihan, attorney to the DPW. Zarafonitis asked what happened to a previous County proposal to give the townships a loan to make the bond payment; Kurtz reported that the townships rejected the loan offer which was subsequently rescinded. Zarafonitis feels that accepting the proposed resolution is preferable to making an out-of-pocket payment at this point. Payments are made on the bonds semi-annually. There was concern over whether the situation will have improved by the time the next payment comes due.

Motion by Zarafonitis, support by Takayama to adopt Resolution #R-2006-17 as presented.

Bzdok recommended that if the resolution is to be adopted, the first and fourth "whereas" clauses should first be stricken. These clauses appear to be attempted representations of

the terms of the original bonding agreements, and removal of them would not impair the function of the resolution.

Motion amended by Zarafonitis, support by Takayama to adopt Resolution #R-2006-17 as amended to remove the first and fourth “whereas” clauses. Motion carried by unanimous roll call vote.

2. **Consider proposed petition to the County Board of Public Works to have Acme Township included in the curbside recycling district:** The Board was provided with copies of the existing county solid waste ordinance, and is being asked to consider requesting the County to include all of Acme Township in the mandatory curbside recycling district. Within the district, waste haulers serving residential customers must provide curbside recycling.

Corpe used a map provided by Kelly Ignace at Resource Recovery to demonstrate the areas in the township already within the curbside recycling district or outside of it. She believes the main thrust of the proposal is to decrease the need for existing centralized recycling drop off sites which are funded through tipping fees at the landfill. Revenues are not keeping pace with centralized drop off expenses. Also, the centralized locations can be used by anyone – even those not within the County, while the County is footing the bill. If an area is included in the district, any residential land uses must be provided with curbside recycling. The key factor to consider is that waste haulers might increase the pick-up fees for properties newly included in the district, and it would be difficult to determine in advance how much of an increase each hauler might charge.

Kladder asked how tourists in our area would recycle. Corpe offered the opinion that if they are staying in a residence they would have curbside recycling. If they are staying at a motel there would be no change, as the initiative would not apply to commercial uses.

Kladder stated that even though he is in a curbside recycling area, he has a long driveway and finds it difficult to haul the recycling bin to the end of his driveway. It is easier for him to load his recyclables into the car and drive them to the drop-off on a periodic basis. He asked if there would be an incentive to recycle, or if more people would simply throw everything away. Boltres believes the current system provides too much of an actual/potential subsidy to out of area recycling users, who use centralized drop-off sites at local residential customers' expense.

There was discussion about the article in the newspaper recently about Garfield Township and the City of Traverse City potentially working together on a joint municipality-wide trash hauling contract with a single contractor, as opposed to having individual homeowners contract with 6 or 7 different firms. Under the current system, different companies bring their trucks to the same neighborhood multiple days per week. Local trash hauling costs are also higher for a lower level of service than in downstate areas where a municipality has entered into a bulk contract with a single hauler. Corpe told Ms. Ignace that she'd like to be kept informed on the joint initiative in case Acme might be interested in joining. The Board was generally also interested in learning more about a potential bulk contract partnership, although Boltres feels that the township is not always best served when it participates in County programs and he might favor having us seek an independent contract. Areas downstate with such contracts pay less per month per household and can leave brush and large items at the curb each week at no additional fee. Corpe noted that seeking total township inclusion in the curbside recycling district would not impair our ability to seek a longer-term trash contracting solution.

Motion by Boltres, support by Dunville to table the issue until the November meeting to allow more time to fully study waste hauling issues for Acme Township. Motion carried unanimously.

3. **Consider approval to pay a portion of costs to survey Holiday Road as part of a potential reconstruction project:** Kurtz stated that it is widely recognized that Holiday Road is in poor condition; it generates more complaint calls than any other issue. He, Corpe and Mark Lewis from the Infrastructure Advisory have been working with East Bay Township Supervisor Glen Lile and some private citizens regarding potential repairs to the road east of Five Mile Road. The township is also asking the Road Commission to make some interim repairs, particularly to a very bad 0.8 mile stretch.

The Road Commission is asking the townships to jointly cover the costs of surveying preparatory to design engineering. They have hinted that they may also be seeking up-front payment for costs to have the staff perform the design engineering. Corpe reported that many of the decisions about Road Commission budget and work program are being left for the new manager to make after she starts work on October 16. Kladder asked if design engineering might be part of Road Commission cost-sharing in the project.

The portion of Holiday Road in Acme Township east of Five Mile Road ends generally near the Mt. Holiday ski lodge. Approximately 450 residential units in Acme are served from Holiday Road, with approximately 640 units in East Bay served. Approximately one-third of the proposed project area is in Acme and two-thirds in East Bay.

The question of funding was addressed next. Corpe reported that since 2002 the township has received payments pursuant to the METRO Act, under which telecommunications providers pay a certain number of cents per lineal foot of transmission lines in public rights-of-way to the state, and the state redistributes the funds to municipalities based on the number of lineal feet of lines within their boundaries. By law this money can only be used by the municipalities for rights-of-way related purposes. The payments are received annually in April. The township has received a total of about \$23,000 since inception, so the surveying could be funded from there. The funds are currently in a General Fund line item, although next month Corpe will be recommending that they be segregated out into a separate fund where revenues and expenditures can be accounted for separately. The state can require accounting for the use of the funds at any time; if the township had over 10,000 we would be required to provide annual accountings. Segregating the funds will make accounting simpler over time.

Kurtz would prefer to defer a decision until the Road Commission makes a commitment as to how much of a reconstruction project costs they would share; by law the maximum would be 50%. Corpe reported we receive multiple complaints per day, particularly during tax payment season. She explains that property taxes do not fund road maintenance, which is funded through a fixed number of cents per gallon tax on gasoline sales. When gas prices rise and people buy less gas, tax revenues decrease at the same time that road materials costs are increasing. She has been seeking citizens who could work with the organized citizens in East Bay to petition the township for a Special Assessment District. Few people will want to sign a petition without an idea of possible expense they would incur. While the Road Commission provided a rough estimate, a more precise figure can't be known until design engineering is performed, which can't happen until the area is surveyed. The Road Commission is in a budget crunch, and is asking for surveying reimbursement up front so they won't be "stuck" with the cost if the SAD did not proceed. Township expenditures for the survey can be reimbursed through the SAD levy if one occurs.

The rough estimate for engineering costs is around \$72,000 based on costs for the recent Veteran's Drive project of \$75/linear foot. The Road Commission estimated a 2008 project cost of \$1 million; for discussion purposes we have been thinking of \$1.5 million to allow for associated needed drainage improvements.

The Board generally felt that it would be appropriate for the townships to share in project costs proportionately to the portion of the road in each jurisdiction and asked if this is how the costs would be split. Corpe noted that there is ongoing discussion about the best way to spread an assessment. If the total project cost were divided between the townships according to the amount of linear footage in each, then Acme's 450 households would share in 1/3 of the project cost and East Bay's 650 households would share in 2/3 of the project cost. Dividing it this way could result in some households paying more dollars per installment than others. Philosophically, it seems reasonable that each household should pay the same amount because each gains one household-worth of benefit from use of the road.

Motion by Boltres, support by Kladder to guarantee the cost of surveying along with East Bay Township in an amount pro-rated according the number of households affected in each township to be served by the improvement. Motion carried by unanimous roll call vote.

G. OLD BUSINESS:

1. Discuss status of road easement connecting Wild Juniper Trail and Five Mile Road: Corpe summarized the packet materials, observing that there has been a long-standing question as to the legal status of a paved roadway connecting Wild Juniper and Five Mile Road. She first became aware of it in 2000 when Brad Zucco, the owner of one of the lots the road crosses, asked the Board to close the road. The Board was not inclined to do so and the request was ultimately dropped. The question became reopened earlier this summer when Mr. Nalley, the owner of the other lot the road crosses sked questions about building a garage that would be accessed by the road.

Research indicates that when Northpointe was platted in 1978-79 the township required a road connection such as the one in question as a condition of plat approval, and agreed to accept an easement such as this from developer Roger Watson if he remained perpetually responsible for its maintenance. No recorded easement has been located, and Mr. Watson verbally confirmed to Corpe this afternoon that he never recorded one. Corpe provided her research to Bzdok, whose professional opinion is that the township does not hold an easement to the road and should leave resolution of further questions regarding ownership and ingress/egress rights to the neighborhood to resolve. Corpe would like to offer her services to the neighborhood as a discussion mediator in the hopes the property owners can reach a mutually agreeable solution.

Tom Bergklint and Liz Hagen, Northpointe residents, noted that the township minutes from January 1979 as published in the newspaper indicate that the township agreed to accept an easement and asked why this would not be sufficient to enact the easement. Bzdok indicated that the publication does not take the place of a platted or deeded easement, a required first step. Publication of an intent to accept an easement would be a second step, but in this case it appears the first step neither occurred and nothing was ever legally created for the township to accept. It appears there was an oversight, and technically the requirements for approval of the plat were never met. The township's only recourse would be to revoke the plat approval, which is not practical or desirable. It is true that there is a paved road that has been used by the public for a long time, and the public may wish to pursue whether they have legal standing to continue use of the road. Whether or not there is a common law dedication inferred from the circumstances of long-term use would be a "tough call." Bzdok stated that the township can agree to close a platted road. However, this is not a platted road, for there is nothing legally there to close even if it is physically there. Bzdok said the township could consider accepting the road as a public or private road if brought up to acceptable standards and title issues are resolved.

Mr. Bergklint asked if the fact that the road physically existed when the current owners

purchased the lots it crosses makes a difference. Bzdok stated that this remains a private matter. Even if the road legally exists it is a private road that the township has no ownership interest in. Corpe reiterated a desire to bring the community together to talk through the issues and seek a solution, perhaps on October 24.

Mr. Zucco stated that while the road was physically there, he didn't know there was no recorded easement for it until later on. More and more cars use the road every day, and he feels the situation is unsafe, particularly in the wintertime. His attorney is telling him that if the township won't close the road he should before he is sued in the wake of accident. If the township won't take action and he does, he is exposed to a lawsuit from the neighborhood, and feels stuck in the middle. Boltres expressed confidence that the neighborhood could work together with Corpe's assistance to potentially reach a mutually satisfactory conclusion.

Mr. Nalley owns the other lot the road crossed. When he was looking for property he was specifically seeking a situation where there was no neighborhood association, since he used to head one up and knew what it was like. He found that no neighborhood association ever existed in Northpointe, which was a factor in his purchasing decision. He also strongly suspected that the road was not a legal structure, but his initial questions about it were not regarding closure but appropriate setbacks from it for new structures. His attorney is advising him to post it as closed the public at a minimum or to physically close it. He is asking how the township might immediately respond were he to physically close the road. Such a closing would not exclude further discussion in his mind. He wondered about the standing of various people in the situation, and what right the rest of the neighborhood would have to intervene. He and Mr. Zucco are open to resolutions that resolve questions of safety and liability, and perhaps road upgrades, but he is uncertain that such a solution is monetarily viable. Mr. Nalley believes that the situation involves oversights by the original developer and he should bear the expense of remediating the situation.

Liz Hagen asked Mr. Nalley if he would consider having a pathway remain available down the hill even if the road is closed for those who would like to continue to use it. Mr. Nalley stated he is seeking peace and freedom from liability. He fears any resolution will cost a lot of money and wonders where it would come from. To him the simplest solution would be for the neighborhood to purchase Lot 15 and the portion of his lot that contains the road. Mr. Nalley asked again what the township would do if the road is closed by the lot owners. Signs could be used but he fears they would be vandalized, so he and Mr. Zucco are considering a more substantial structure. Bzdok stated that the township would not make a commitment one way or the other regarding their action. Zarafonitis stated that it is their road to do with as they wish.

A female resident stated having heard that when Northpointe was originally platted the township required provision of a road to approve the plat. Why should current residents bear the responsibility for fixing a situation that should have been enforced years ago? Bzdok reiterated that the township's only recourse would be to revoke the plat approval which is not feasible.

Consensus was reached to allow Corpe to offer her services to facilitate a meeting of the neighborhood.

2. **Select firm to perform survey to determine correct common lot line between Sayler Park and the Richard & Karen Kane properties on Kay Ray Road:**

Motion by Boltres support by Dunville to approve a contract with Gosling Czubak for \$3,475 to survey the northern boundary of Sayler Park and the southern boundary of Lot 1, Supervisors Plat of Peninsula View, with the costs to be shared

equally between the township and Richard & Karen Kane.

3. **Consider approval minutes from the 08/01/06 regular and Township Board meeting:** Kladder asked to have the minutes removed just to discuss the situation. Corpe noted that at last month's meeting she was asked to consult the recording of the meeting to determine the precise wording used by Mr. Griffith in his statements. She found that the recording did not exist; the recorder dropped from the table during the meeting resulting in accidental erasure. The recorder was her personal device on loan to the township and has been damaged over time. She displayed the replacement recorder purchased by the township and in use this evening as evidence that the equipment issues are being resolved. She also realizes she isn't perfect, and that the Board will take action as they see fit if her mistakes cause difficulties. When she discovered the recording wasn't there, Bzdok advised her to simply make the change requested by the constituent. To Corpe the practical difference between the typed and suggested wording is non-existent, so because it seems of great importance to Mr. Griffith she supports the amendment.

Takayama feels that sometimes he says too much at meetings, and generally Corpe distills what he says down to the key elements. Sometimes he asks himself whether or not the meaning has been captured accurately, and more often than not he lets the minutes stand as presented. Scott originally supported making the change if a need could be proven by the recording, but if it cannot be proven he believes the minutes should stand as created.

Motion by Kladder, support by Dunville to accept the minutes of the August 1, 2006 minutes as amended. Motion carried by a vote of 5 in favor (Dunville, Kladder, Kurtz, Takayama, Zarafonitis) and 2 opposed (Boltres, Scott).

H. REPORTS

1. **County Commissioner's Report** – Larry Inman
2. **Parks and Maintenance** – Tom Henkel
3. **Sheriff's Deputy** – Bob Sillers

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

Mr. Griffith stated understanding that the proposal regarding curbside recycling was not that there would automatically provide free waste collection, only the opportunity to put something out for a fee. Kurtz noted that we have decided to take a month to research the matter further.

Bzdok drew attention to Brian Bourdages' memo regarding the farmland preservation program. Bzdok will be proposing some minor changes to the township's Farmland Preservation Ordinance. Bourdages showed him a map of the properties that made application to the program in the first cycle along with lands that are already protected or public within the township. He recommended that the map be enlarged and displayed in the township hall as it is impressive and might be enjoyed by the public. Corpe will ask Bourdages for a large copy to hang in the hall.

Kladder asked about the codes on the Sheriff's Report, and whether the descriptions to the right explain the codes. He asked which items generated warnings and which tickets; Deputy Sillers stated that only tickets issued are displayed on the report. 113 tickets were issued by the County Sheriff's Department in Acme Township last month; any State Police enforcement would be additional.

John Kennedy asked if it would be wise to ensure that separate bills will be generated for Acme and East Bay regarding Holiday Road improvement expenses.

Meeting adjourned at 9:01 p.m.